

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 6th July, 2016

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Ethuro) in the Chair]

PRAYERS

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE MOTION ON THE ESTABLISHMENT OF A JOINT SELECT COMMITTEE OF PARLIAMENT TO INQUIRE INTO ALLEGATIONS AGAINST THE IEBC

The Speaker (Hon. Ethuro): Hon. Members, I have a Message from the National Assembly on the approval of the Motion on the establishment of the Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4) of the Senate Standing Orders and Rule 9(2) of the Houses of Parliament Joint Sittings rules, I have received the following Message from the Speaker of the National Assembly regarding the approval by the Assembly of the Motion on the establishment of Parliamentary Select Committee on matters relating to the IEBC. I quote:-

Pursuant to the provisions of Standing Order No.41(1) of the National Assembly Standing Orders and Rule 9 of the Houses of Parliament Joint Sittings Rules, I hereby convey the following Message from the National Assembly.

Whereas the Motion on the establishment of Parliamentary Select Committee on matters relating to the IEBC was introduced in the National Assembly on Thursday, 30th June, 2016 to provide a mechanism for a Parliamentary initiative to review matters relating to the IEBC, the electoral process and the electoral law.

And whereas by resolution made on Wednesday, 6th July 2016, in accordance with the provisions of Article 1(1) and (2) of the Constitution and Rule 9 of the Houses of Parliament Joint Sitting Rules, the National Assembly approved the said Motion without amendments.

Now therefore in accordance with the provisions of Rule 9 of the Houses of Parliament Joint Sitting Rules, I hereby convey the said decision of the National Assembly to the Senate.

Hon. Senators, you may recall that the Senate passed a similar Motion last evening. Earlier today, I have communicated the resolution of the Senate to the Speaker of the National Assembly. The effect of this now is that the Houses of Parliament have resolved to establish a Joint Select Committee to look into matters relating to the IEBC, the electoral laws and processes as per the terms of the Motion. The Joint Select Committee needs to move with speed to conclude on its mandate and report to Parliament within 30 days.

Thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise under Standing Order No.40(6) which says as follows:-

“When the Speaker reports a message from the National Assembly under paragraph (4) or (5), the Message shall be deemed to have been laid before the Senate and the Speaker may-

(a) direct that the message be dealt with forthwith;

(b) appoint a day for the consideration of the message; or

(c) refer the message to the relevant Committee of the Senate for consideration.”

Mr. Speaker, Sir, I am now confused. Having read out the Message correctly, you have not given force to Standing Order No.40(6) because it is very specific on what the Speaker should do. You have not done (a), (b) and (c).

Kindly protect me from my younger brother, the Senator for Vihiga County.

Could you clarify so that it is clear?

The Speaker (Hon. Ethuro): Order! Sen. (Dr.) Khalwale, I thought your younger brother was protecting me from you because in the directions, I finally gave that the Committee needs to move with speed.

I have directed it to the relevant Committee of the Senate for consideration. The one we approved yesterday was on the Motion and they have a period of within 30 days to report back to Parliament.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, on a point of order, Mr. Speaker, Sir. My understanding is that the select Committee is a joint Committee and not a Committee of this House. It is a Committee of the two Houses of Parliament. Could you clear my confusion? I always love learning.

The Speaker (Hon. Ethuro): I will be pleased to not only teach you, but clear your confusion. In fact, on your insistence, a Committee of the Senate also included the joint Committee. We already have two joint Committees which draw membership from the National Assembly and the Senate. That is what we have done even on this particular one. That is a Committee for purposes of Item (c) you are talking about. Looking at (a), I direct that the message be dealt with forthwith. That is what I have directed.

On the appointment of a day for the message, I have said that I have sent a similar message to the National Assembly reporting on the resolution that we made. Therefore, this has taken effect already by the basis of reporting to the Senate and the same to them on the basis of reporting to the National Assembly. You are okay. We have taken care of you.

What is it, Sen. Murungi?

Sen. Murungi: Mr. Speaker, Sir, I thank you for moving with speed regarding the Committee on the IEBC. The Standing Orders say that you may deal with the matter forthwith in the manner that you have done. It is worthy to note that the two co-chairs of that Committee are Members of this House; that is Sen. Orengo and I, I would like us to move with speed given the limited time that has been given to this Committee. The confusion I have is on the secretariat. Since this a joint Committee on both House, shall we rely on the Clerk of the Senate or the Clerk of the National Assembly? Who do we deal with forthwith?

The Speaker (Hon. Ethuro): Hon. Senators, I invite you to check your Standing Orders because I referred you to Rule No.9. On page 169, we have the Fourth Schedule which gives interpretations, summons to Members, time of sitting, proceeding in joint sittings, procedures of joint sittings and report of proceeding.

Rule No.9 says the Clerk shall cause to be prepared a full report of the proceedings of every joint sitting of the Houses and shall as soon as practicable publish in such form and manner as the Speaker of the House may from time to time direct.

Rule No. 0 states that the Clerk of the Senate and the Clerk of the National Assembly shall be joint Clerks of a joint sitting of the Houses or of a joint Committee. Either of them may exercise a function to be exercised by the Clerk. Rule No.10 on page 172, should clear your little confusion.

What is it, Sen. Karaba?

Sen. Karaba: Mr. Speaker, Sir, this one is a bit bright. There is nobody who is to be held responsible for the wording. Therefore, I am standing up so that you could catch my eye.

The Speaker (Hon. Ethuro): Order, Sen. Karaba! What did you say?

Sen. Karaba: Mr. Speaker, Sir, I wanted to catch your eye as you catch mine.

(Laughter)

That is English language. Now that we have caught one another's eye, you can proceed.

The Speaker (Hon. Ethuro): Order, Sen. Karaba! Given your size, I do not catch your eye. I just need to catch your frame.

There is some pending matter under petitions. I wish to recognize the Vice Chairperson of the Committee on Legal Affairs and Human Rights. It is not for nothing that Sen. Karaba wants to catch my eye.

PETITION

REPORT ON PETITION: PETITION BY THE COUNCIL OF ELDERS OF THE KIRINYAGA *MIHIRIGAKENDA* REGARDING THEIR CLAIM TO THE MWEA TRUST LAND

Sen. Sang: Mr. Speaker, Sir, we made a commitment yesterday. The process of getting the report approved was done a few minutes ago and it has already been cleared by your office. Unfortunately, we are unable to table it now, but it is done. I, therefore,

request the good Senator for Kirinyaga County, or under Standing Order No.1, you allow me to table the report in a few minutes.

The Speaker (Hon. Ethuro): Order! Sen. Sang, you do not need to invoke any other orders. I will have to consult Sen. Karaba on this matter given the passion he raised this matter yesterday and observing your reluctance, I am not sure whether the ensuing debate can be canvassed today. If Sen. Karaba is willing, we can allow you to table the report of the petition today and then we can revisit the matter tomorrow.

Sen. Karaba, do you agree?

Sen. Karaba: Mr. Speaker, Sir, let the report be tabled today and then we can discuss it later. This is a very emotive petition. The people of Kirinyaga are waiting for it. I am sure that they are watching me now as I contribute. I am aware of that.

(Laughter)

The Speaker (Hon. Ethuro): Sen. Sang, you may table the petition report.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I do not intend to challenge your ruling. I fully concur with what you have just ruled. However, looking at the Order Paper, we are under Order No.4. It would be advisable to Sen. Sang that if he has any document to table, then that can be done after the Clerk-at-Table calls out Order No.5, then Members can now table documents.

The Speaker (Hon. Ethuro): Sen. Khaniri, I would like to invite you to look at Standing Order No.225(4). It states:-

“A Senator having presented a Petition shall, without question put, lay the petition on the Table of the Senate.”

I am basically interpreting that to mean you can lay a petition; you can lay a report, a document related to a petition during the Order; Petition. It does not have to be when it is time for Papers laid. That is my reading. I have every reason to believe that it is the correct reading. He is presenting a report on a petition. Is it not Sen. Sang?

PAPERS LAID

Sen. Sang: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 6th July, 2016:-

REPORT ON PETITION: PETITION BY THE COUNCIL OF ELDERS
OF THE KIRINYAGA *MIHIRIGAKENDA* REGARDING THEIR
CLAIM TO THE MWEA TRUST LAND

Report on the Petition of the Council of Elders of the Kirinyaga *Mihiriga Kenda* (Nine Clans) on the boundary dispute between Kirinyaga and Embu counties.

REPORT ON PETITION BY THE EMALI AND MULALA
RESIDENTS ON BOUNDARY DISPUTE

Report on the Petition by the Emali and Mulala residents on the boundary dispute between Makueni and Kajiado counties.

(Sen. Sang laid the documents on the Table)

The Speaker (Hon. Ethuro): Next order.

REPORT ON THE EAC INTER-PARLIAMENTARY GAMES

Sen. Melly: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 6th July, 2016:-

Report on the East Africa Community Inter-Parliamentary Games held in Kigali, Rwanda from 4th to 11th December, 2015.

(Sen. Melly laid the document on the Table)

REPORT ON THE IPU REGIONAL
SEMINAR FOR AFRICAN PARLIAMENTS

Sen. Nabwala: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 6th July, 2016:-

Report of the Inter-parliamentary Union regional seminar for African Parliaments on effective implementation of resolution 1540 in Africa; opportunities for Parliaments held in Abidjan, Cote d'Ivoire, in February, 2016.

(Sen. Nabwala laid the document on the Table)

The Speaker (Hon. Ethuro): We are done with Papers laid Next order.

STATEMENTS

The Speaker (Hon. Ethuro): Order, hon. Senators. You may wish to proceed along the lines of Sen. Karaba. I cannot see your names on the screen.

Proceed, Sen. (Prof.) Lesan.

INDUSTRIAL ACTION BY UNIONISABLE MEMBERS OF THE
KENYA PLANTATION AGRICULTURAL WORKERS

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on Labour and Social Welfare on the following:-

(1) Is the Chairperson aware of the industrial action by the unionisable members of the Kenya Plantation Agricultural Workers who are mainly tea pickers and other workers of various cadres in the Kenya Tea Growers Association (KTGA) tea plantations in the counties of Bomet, Kericho and Nandi?

(2) Is the Chairperson aware that subsequent to the industrial action, extensive destruction of property has occurred?

(3) Give the estimate value of the property destroyed during the industrial action.

(4) Explain the steps that have been taken to ensure that the protest strike is peaceful considering that the tea estates are cosmopolitan with a population consisting of all communities in Kenya.

(5) The steps the Government has taken to ensure immediate resolution of this dispute.

Sen. Okong'o: Mr. Speaker, Sir, if you may allow, I would like to ride on this statement to include Nyamira County where there was that kind of industrial action. There was no destruction but there was rampant human rights abuse.

The Speaker (Hon. Ethuro): Where is the Chairperson?

Proceed, Sen. Gwendo.

Sen. Gwendo: Mr. Speaker, Sir, I am a Member of the Committee on Labour and Social Welfare. I will consult with the Chairperson to have the relevant answers by next week on Thursday.

(Statement deferred)

The Speaker (Hon. Ethuro): Next statement.

BURNING OF SECONDARY SCHOOLS IN KISII COUNTY

Sen. Ong'era: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Education regarding recent burning of secondary schools in Kisii County namely; Nyamache Boys Secondary School, St. Andrews Kagwi Boys High School, Nyakoiro High School, Itierio Boys High, Mochenwa, Riambase and Nyamonye SDA Secondary Schools. In the statement the Chairperson should:

(1) Explain the reason for this burning happening in our schools especially arson cases and steps to address the root cause.

(2) State what the Ministry of Education, Science and Technology is doing on the rising indiscipline in the schools.

(3) State the measures taken to prevent similar cases arising across the country.

(4) Why are secondary school principals being transferred because of the burning of these schools? What is the co-relation?

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on Education?

Sen. Karaba: Mr. Speaker Sir, we need two weeks to issue the statement. However, in the meantime, we have also requested the Cabinet Secretary to appear in our Committee over the same. So we are ahead of the Senator. The Cabinet Secretary (CS) is appearing in our Committee next week on Tuesday so that we can further discuss the burning of schools in Kisii and Nyamira. In two weeks time---

The Speaker (Sen. Ethuro): Order. The standard response time is two weeks. Since you are ahead of the Senator, why do you not make it Thursday, next week?

Sen. Karaba: Mr. Speaker Sir, after meeting the Cabinet Secretary next week, we should be able to give you the statement.

The Speaker (Sen. Ethuro): Sen. Ong'era!

Sen. Ong'era: Mr. Speaker Sir, may I request through your Chair that the Chairperson of the Committee on Education would call the Senator for Kisii County and as members of that delegation which I am the Vice-chairperson, be present when the CS for Education is called.

The Speaker (Sen. Ethuro): What is the size of your delegation, Senator?

Sen. Ong'era: Mr. Speaker Sir, our delegation is three Senators. Sorry, I had forgotten Sen. Onchwangi.

The Speaker (Sen. Ethuro): So the head of delegation is the Chairperson, you are the Vice-chairperson and the other one is a Member.

Sen. Ong'era: Yes, Mr. Speaker Sir.

The Speaker (Sen. Ethuro): Sen. Murungi.

Sen. Murungi: Mr. Speaker Sir, I would like to ride on this request for statements. I was with the CS for Education in Meru County last week, where we got information that 12 schools within my county had their dormitories burnt. The CS ordered investigations regarding the 12 schools and it appears to be a nationwide problem.

I suggest the CS be requested to appear before a special *Kamukunji* of this House, instead of appearing before the Committee on Education or if the Committee on Education could invite all the Senators because I believe many of us have issues that we would like to explore with the CS when he is invited. It is surprising that sometimes a dormitory is burnt immediately the students have returned from home after being sent away for burning another dormitory.

Mr. Speaker Sir, you recall that one dormitory in Kisii was burnt the same day the CS had visited Kisii and had visited the same school that had been burnt and another dormitory was burnt immediately after he left. This means that there must be clandestine movements for burning these dormitories, and that is what we would like to explore, expose, get it punished and stopped.

Parents cannot continue building dormitories only for them to be burnt by criminals and nothing seems to be happening to these criminals. This is a very important Statement and we would all like to be present when the CS comes to this House.

Sen. (Dr.) Machage: Mr. Speaker Sir, this is a House of records. If you heard the remarks by Sen. Ong'era, she talks of the Vice-chairperson of a delegation which is not prescribed in the Constitution. Is she in order?

The Speaker (Sen. Ethuro): Let us dispose Sen. Ong'era and then the Chairperson can respond to the requests by Members.

Sen. Ong'era: Mr. Speaker Sir, I want to thank Sen. (Dr.) Machage for bringing this statement which could cause an amendment to the Standing Orders. When I was appointed, my letter from the leader of our delegation indicated that I was the deputy leader of the delegation. I do not know how it was written.

The Speaker (Sen. Ethuro): Order. Senator! Which is which? You claimed that you are Vice-chairperson, now you are saying that the letter read deputy chairperson. What is it, Sen. Sang?

Sen. Sang: Mr. Speaker Sir, now that Senator Obure who wrote the letter is here, could he confirm?

The Speaker (Sen. Ethuro): Order, Sen. Sang! You are completely out of order. There is nothing that ropes in Sen. Obure because there is nothing adversely mentioned

against him. He should be under no obligation. What I get is that it was a local arrangement made by the delegation, but also our Standing Orders allow the head of delegation to nominate Members of the delegation to vote for the delegation in his absence. So, I do not see anything untoward when they make their own working arrangement. If anything, Sen. Sang, maybe you are just alone and that is why you do not have those challenges.

The Chairperson, Committee on Education, there is a request that you invite the Members for your scheduled meeting with the CS.

Sen. Karaba: Mr. Speaker Sir, instead of inviting all of them to a Committee room which could be too small, we would rather have the CS attend Plenary. I will alert him.

The Speaker (Sen. Ethuro): What time is your meeting?

Sen. Karaba: Mr. Speaker, Sir, on Tuesday at 10.00 a.m.

The Speaker (Sen. Ethuro): Hold the meeting here.

Sen. Karaba: Mr. Speaker Sir, we can revert here so that all Members can access.

The Speaker (Sen. Ethuro): You can invite all the Senators who want to participate. It is so directed.

Next Statement!

The Speaker (Sen. Ethuro): Sen. Nabwala.

INCREASE IN THE PRICE OF MAIZE FLOUR

Sen. Nabwala: Mr. Speaker Sir, pursuant to Standing Order No.4 (2) (b), I wish to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the recent increase in the price of maize flour.

In the Statement, the Chairperson should:-

(a) Confirm that the recent increase in the price of maize flour is not due to millers preferring to import maize from neighbouring countries instead of buying locally produced maize.

(b) Specifically clarify why the millers are not purchasing produce under the Galana-Kulalu Irrigation Project and state what the Government is doing about it.

(c) Confirm that millers have been avoiding maize from the National Cereals and Produce Board (NCPB) because it is of poor quality owing to poor quality storage.

(d) State the extent of the financial loss incurred by NCPB as a result of the negligence in maize storage and indicate what disciplinary measures the Government has taken against the culpable officials of the corporation, considering that such negligence could lead to food insecurity in the country.

The Speaker (Sen. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir. On that very important Statement, allow me to request some additional information. The Galana Kulalu investment by the Jubilee Government ran into billions of shillings. Could the Chairman tell us how many bags of maize were harvested from that scheme, so that we know whether the produce was enough to cushion the apparent excuse that there is a shortage of maize and that is why the price has gone up?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, in answering the question raised by Sen. Mukiite, could the Chairman also tell the House and country

whether there is any truth in what was stated by the head of the National Cereals and Produce Board; that they have stocks of maize that is more than eight years old in the stores and it has gone bad, probably, with aflatoxin? Could he also assure the country that this contaminated maize will not be released to the population as food rations, more particularly, the vulnerable areas that survive on food rations from the Government in the northern parts of Kenya, Turkana and so on?

Sen. (Dr.) Machage: Mr. Speaker, Sir, it is well known in this country that in the last three years, Turkana region and the surrounding areas have suffered catastrophic hunger. Could the Chair tell this House why the people of these regions were denied food which has hitherto been left to get spoilt in the stores?

The Speaker (Hon. Ethuro): Chair, Committee on Agriculture.

Sen. Murungi: Mr. Speaker, Sir, the issues raised by Members are very serious. Therefore, we would like to make a very comprehensive statement after consulting the various bodies that are in charge of the various issues that have been raised. We request for three weeks to enable us bring an appropriate answer to the House.

The Speaker (Hon. Ethuro): Sen. Kiraitu, we are dealing with food security and there is nothing to convince me, from what you have said, that you need three weeks. All you need is just to be more efficient in your consultations. I direct that you bring the answer in two weeks.

Sen. Murungi: Mr. Speaker, Sir, you know that I am a very obedient Chairman. The Statement will come in two weeks time.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 12TH JULY, 2016

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, this is the Statement on the business for the Senate next week. As Members would know, we normally issue these statements on Thursdays, but as you are aware, tomorrow is a public holiday to mark *Eid ul Fitr*, which marks the end of the month of Ramadhan, which is observed by our brothers and sisters of the Muslim faith.

Mr. Speaker, Sir, on Tuesday next week the Senate Business Committee will meet at 12.30 p.m., to schedule the business for next week. Subject to that meeting and directions thereof, it is expected that emphasis will be laid on the Bills that are in the Committee stage. I want at this point to remind the House that we have urgent Bills. Before we went for the short recess two weeks ago, we did a good job to clear most of the urgent constitutional Bills at Second Reading stage. It is hoped that the Committees have looked at the Bills and will be able now to look at them at the Committee of the Whole, so that we can pass them in the remaining couple of weeks.

On Wednesday, the Senate is expected to consider business that will not be completed on Tuesday, including the following Bills: The Health Bill (National Assembly Bill No.14 of 2015), the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015), the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2015), the Energy Bill (National Assembly Bill No.50 of 2015), the Access to Information Bill (National Assembly Bill No.36 of 2015), the Seeds and Plant Varieties Bill (National Assembly Bill No.43 of 2015) and the Petroleum Exploration Development and Production Bill (National

Assembly Bill No.44 of 2015.) The Senate will consider also any other business scheduled by the Senate Business Committee. On Thursday the Senate is expected to consider any business that will not be concluded during the Wednesday sitting, including Motions and other Bills that are at Second Reading stage.

Mr. Speaker, Sir, allow me to make two concluding remarks. First, I wish to urge the Senators to attend next week's sittings so that we can clear the Bills that are coming up for the Committee stage. The reason is that at the end of July, we are expected to go on long recess. To avoid being recalled during our recess, we should pass the Bills with a constitutional deadline of 27th August, if possible next week, so that in case of any mediation between the National Assembly and the Senate, it can take place between now and 28th July when we are expected to go on long recess.

Lastly, I wish my Muslim brothers and sisters a happy holiday and God's blessings. We stand with all of them in the spirit of one nation, one people. This should not be seen as a Muslim affair, but an affair for all of us, because they also celebrate with us when we have Christian holidays.

Mr. Speaker, Sir, with those remarks, I beg to lay the Statement on the Table of the Senate.

(Sen. (Prof.) Kindiki laid the document on the Table)

The Speaker (Hon. Ethuro): Next Statement by the Chairperson, Committee on National Security and Foreign Relations. Statement (b) is by the same Chair.

Statement by the Chair of the Committee on Lands and Natural Resources. I hope that the Senate Majority Leader is making arrangements to ensure that the Chair who is supposed to make statements (a) and (b) is available.

Proceed, Sen. Kivuti.

COMPENSATION OF LAND OWNERS ALONG THE STANDARD
GAUGE RAILWAY (SGR) ROUTE

Sen. Kivuti: Mr. Speaker, Sir, the Senator who requested for this Statement is not in the House. However, I seek leave to nonetheless read the Statement, unless you direct otherwise.

The Speaker (Hon. Ethuro): Could you repeat?

Sen. Kivuti: Mr. Speaker, Sir, in keeping with precedence normally the Member who requested for the statement needs to be in the House when it is being presented. In this case, Sen. Sonko is not in the House, but I have the Statement ready. It was ready even yesterday and this matter was in yesterday's Order Paper. I, therefore, seek leave to proceed with it.

The Speaker (Hon. Ethuro): Let us give him a bit of notice, so that you read it, regardless, on Tuesday.

Sen. Kivuti: It is okay, Mr. Speaker, Sir.

(Statement deferred)

POINT OF ORDER**FAILURE BY SENATORS TO PROSECUTE THEIR
STATEMENT REQUESTS IN THE HOUSE**

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir, having served as a Member of the Speaker's Panel in the Ninth and Tenth Parliaments, you know that the traditional at that time on questions was that if the questioner was not available for a reason not apparent to the Speaker, that question was always dropped. Would I be in order to suggest that the same *modus operandi* is introduced in this House, so that we avoid situations where Members just ask for statements and disappear?

Sen. Sang: On a point of order, Mr. Speaker, Sir. While I appreciate the tradition referred to by Sen. (Dr.) Machage, on several occasions when Senators seek statements in this House, we always have riders and some of those questions may not just relate to the particular Senators requesting for those statements. It is a matter that once placed before the House, it is of interest to everybody. What would be more appropriate is that if the Member is consistently not available for the release the statement sought, the Chairperson can be allowed to deliver it, so that the other Senators can engage on the matter.

The Speaker (Hon. Ethuro): What do you have to say, Chair?

Sen. Kivuti: Mr. Speaker, Sir, I would like to bring to your attention the fact that Sen. (Dr.) Machage, who is a Member of the Speaker's Panel, directed at one point that this Statement be issued the following day, whether or not Sen. Sonko was in the House. He declared that the Statement was the property of the House. That is why I was seeking your guidance on whether or not to proceed. I would be quite happy to proceed because it is not a very long Statement. Again, the matter in question may be of interest to this House. The Standard Gauge Railway (SGR) is a matter that may be of interest to the rest of the House.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, allow me to add my voice to this matter, in support of the proposition by Sen. Sang. Once a Statement is sought, it becomes the property of the House, especially on matters that are of national interest and nature. More particularly, we could encourage the Chair to be sympathetic if it is a Member who is constantly in the House, like the distinguished Senator for Meru, Sen. (Prof.) Lesan or others. But when a persistent offender, like the Senator for Nairobi, is not here, I would encourage you to allow the Statement to be read and then we shall interrogate it as a matter of national interest.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. The rules are very clear. Is the Senate Minority Leader, therefore, in order to impute improper motives on the person of the Senator for Nairobi, Sen. Mike Sonko, that he is a persistent offender, without bringing a substantive Motion?

The Speaker (Hon. Ethuro): Let me start by disposing the first one by Sen. Khaniri. I am not sure whether an observation made is imputing improper motive. You can say Sen. Khaniri is ever present, permanently absent or an occasion visitor. I want to believe that is just an observation by one Senator. It is also very probable that another Senator will see Sen. Khaniri to be permanent when another one sees him to be absent. It depends on what times they come to the House. So, I will leave it there.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I thank you for coming to the immediate defence of the Senate Minority Leader. However, are you confirming that the confirmed ever absence of Sen. Sonko is with your leave? Could you confirm that because the Constitution is very clear on what is expected of you if--

The Speaker (Hon. Ethuro): Order! Sen. (Dr.) Khalwale, you know how to challenge the Speaker. You do not do it by riding through other statements but you should seek for my communication directly.

Secondly, I did not agree with Sen. Wetangula but I gave both options. In fact, I used Sen. Khaniri as a point of reference that it is probable that one Senator may see another one always absent and another Senator will see the same Senator to always be present. It also depends on the times whether there is a coincidence for the arrival or departure to or from the House. I left all the option open. So, your point of order does not even arise in the first place.

Sen. Sang: On a point of order, Mr. Speaker, Sir. We know that this House operates in the plenary and also within our committees. The said Senator, Mike Sonko, has actually executed his responsibilities in this House within a committee. The last one we know of is where his conduct is a subject of your ruling. Therefore, are they in order to suggest that Sen. Sonko has not been attending plenaries in this House when we know that he caused some stir within a committee of this House?

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Sang. Members, I think we are now trading on dangerous grounds of discussing the conduct of a Member without a substantive Motion. Let me revisit the issues raised. I think Sen. (Dr.) Machage raised a very important issue based on the practice of the previous Parliaments. Sen. Sang countered that on the basis of the practice of a House in the 11th Parliament and Sen. Kivuti supported it. I think that has been our practice and so was the practice as observed by Sen. (Dr.) Machage in last Parliament and other Parliaments. We took a different approach in the 11 Parliament in the sense that some of these matters are extremely critical. We have been generous in terms of allowing whoever--- So, the statement should be present but to a limit, so that when they are not always available, then the statement will proceed, whether the Member is present or not because we take all statements to be the property of the House.

To me, that seems to be a good practice which should continue. Obviously, on this particular matter, you can be sure that it is a matter of immense public interest. So, we will give the Senator one more chance and the same will be given by Tuesday. The only thing I did not know and the Chair did not say it was that the previous preceding officer had given one more chance. Since I have made the ruling, I cannot reverse my own ruling for no apparent good reason. So, we will still do it. If there will be another presiding Chair on Tuesday, remind him that you are given up to Tuesday as the last day to issue the statement. The responsibility is on you.

Sen. Kivuti: Mr. Speaker, Sir, whereas the responsibility may be on me, the onus to direct what comes on the Order Paper is on the Rules and Business Committee (RBC) and whoever will be seated where you are on that particular day. I rest my case. Otherwise, I will be ready to proceed as directed.

The Speaker (Hon. Ethuro): You have no case to rest. I have directed that you issue the statement on Tuesday regardless of whether Sen. Sonko is present or absent. I have also directed that on Tuesday, if for some reason somebody canvasses for a deferment, the onus is on you to confirm that this was the last day you are allowed to make the statement. Here, we do not spell all the procedures once the directives have been done. It is systems go including the matter appearing on the Order Paper of Tuesday. I do not need to be explicit. So, take what is yours and do not assume responsibilities that are not allocated to you.

Let us go to the next statement.

CONSTRUCTION OF KIRINYAGA SEWERAGE PLANT

The Speaker (Hon. Ethuro): Is the Chairperson of the Committee on Roads and Transportation around? If not, let us have the Vice Chair, Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, I had not seen the Statement. Please just allow me a few minutes to find out.

The Speaker (Hon. Ethuro): We will defer that one.

(Statement deferred)

STATUS OF THE MAKUTANO-NGURUBAINI-KIMBIMBI-SAMSON CORNER ROAD

The Speaker (Hon. Ethuro): We shall also defer than one.

(Statement deferred)

Let us move on.

HARASSMENT OF BODABODA OPERATORS IN NAIROBI COUNTY

The Speaker (Hon. Ethuro): This was also to be responded to by the Chairperson of the Committee on Roads and Transportation. Vice Chair, do you have any information?

Sen. Sijeny: Mr. Speaker, Sir, I have not been given any information but let me find out.

The Speaker (Hon. Ethuro): We will come back to that.

(Statement deferred)

Let us move to Statement (g)

STATUS OF STREET FAMILIES AND URCHINS IN KENYA

The Speaker (Hon. Ethuro): Let us have the Chairperson of the Committee on Labour and Social Welfare, Sen. Justice Madzayo. Order, Chairs, there is a reason we publish Order Papers in advance so that everybody knows their responsibility.

Sen. Madzayo: Mr. Speaker, Sir, I will be in a position to respond to these questions within the next two weeks.

The Speaker (Hon. Ethuro): Order, Chairman. When you see statements to be issued, it means they are due and not new statements being sought, unless you are taking advantage of the absence of the Member.

Sen. Madzayo: Exactly. Further, I have not received the response from the Ministry responsible.

The Speaker (Hon. Ethuro): So, it will be issued in two weeks' time.

(Statement deferred)

Let us go back to statements to be issued for the second time starting with Statement (a).

CAMPAIGN AGAINST MANUFACTURE AND CONSUMPTION OF
SECOND GENERATION ALCOHOL

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I have tried to reach the Chair and Vice Chair of the Committee on National Security and Foreign Relations but it has not been possible. I have discussed the matter with the two Senators who had requested for the Statements; Sen. (Dr.) Khalwale and Sen. Khaniri. We are in concurrence that today being the end of Ramadhan, it is possible that the Chair and his Vice Chair are held up in that context and no other Member seem to have any information that can help this House now. In consultation with my colleagues, we are requesting the Chair to defer that matter to Tuesday and then I will communicate to the Chairman of the Committee the directive of the Chair of today's sitting. They should comply on Tuesday without fail.

The Speaker (Hon. Ethuro): It is so directed. In the circumstances, the Member could attract our sympathies.

What is it Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I want to confirm that it is true that those consultations have been held and we have concurred with the request by the Senate Majority Leader. However, on that very important issue, all Kenyans who subscribe to the Islamic faith or have Muslim friends or relatives are today observing *Eid Ul Fitr*; they are on holiday. Could the Senate Majority Leader tell Kenyans what informed the Government not to make today a holiday instead of tomorrow? No Muslim will be on holiday tomorrow.

The Speaker (Hon. Ethuro): I consider that a valid point of order.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Tradition has also been set in this House. Whenever the Chairperson or the Vice Chairperson of a Committee is not present, a Member is called upon to read the Statement. This has been omitted today. In any case, is the Senate Majority Leader in order not to give the Statement himself?

The Speaker (Hon Ethuro): Order, Members. Senate Majority Leader, do not respond to Sen. (Dr.) Machage, because you had substantively addressed those issues. Respond to the issue raised by Sen. (Dr.) Khalwale, because, obviously, the mismatch is affecting the business.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I agree with Sen. (Dr.) Khalwale that, that is the situation. Nevertheless, this is not an extraordinary happening. Every year, there is normally contestation within the Muslim fraternity, which puts the Government in an awkward situation. It revolves around when, where and by who the moon has been sighted. This is not the only time we have had this mismatch. There are times no lesser person than the Chief Kadhi has announced a holiday and sections of the Muslim community have defied him depending on where the moon has been sighted, by who and how the moon looked like or such factors. Therefore, I do not want to delve into that matter. It is not the work of the Government to engage in internal differences in various faiths. It has happened repeatedly, but I do not think that it has harmed anybody.

Finally, the whole idea of giving a holiday is in honour of our brothers and sisters of the Muslim faith, notwithstanding that the holiday may fall today or tomorrow. It also offers the country a day to stand in solidarity with them. That should be excused, because the rest of us are here. What the Senate could have done tomorrow could be done today, except for small issues like that Statement. I am sure that the Statement will be dealt with on Tuesday.

The Speaker (Hon Ethuro): Order, Senate Majority Leader. Every business on the Order Paper is a big issue. Therefore, you need to make amends.

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, to the extent that I have insinuated that any part of the business of this House is of secondary importance, I withdraw and apologise unreservedly to the Speaker and the House.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. This is very serious business. Yesterday, the moon was sighted in Tanzania and Kenya during the day and an announcement and a communique was made to the country to that effect. Why did the Government, upon receiving that communique from the Islamic faith, not give them today to celebrate and be joined by us? Today is the most important day to them. If they have no reason, then the least they can do is to apologise.

Sen. Karaba: On a point of order, Mr. Speaker, Sir. The Hon. Senator should know that the earth is not flat. Since the earth is spherical, by the time we sight the moon, others will have sighted it earlier. It depends on the position you are on earth. For example, if you are in Comoros Islands, you could sight the moon before those in Kenya. If one is in America, they could sight it even two days before. I, therefore, wish to correct my friend, Sen. (Dr.) Khalwale, that positions vary because of the earth's spherical nature.

The Speaker (Hon. Ethuro): Order, Members. The Senate Majority Leader discharged this matter very well. It has now been academically confirmed, to borrow the words from the Senate Majority Leader, by no lesser person than the former Geography teacher, Sen Karaba.

(Laughter)

There is not much to comment on this issue; that case is rested. Sen. (Dr.) Khalwale should be forgiven because he is a medical doctor. He works on human beings who are the same all over the globe. However, all features of the globe are not the same in every spot of the globe. That is where Geography reigns supreme.

What is it, Sen. Sang?

Sen. Sang: On a point of order, Mr. Speaker, Sir. While the Geography question has been settled, there was a more fundamental issue with the assertion by Sen. (Dr.) Khalwale. It is not anybody who is allowed to sight the moon for a holiday to be declared. It is always a particular person; the Chief Kadhi. Sen. (Dr.) Khalwale is not the Chief Kadhi and he did not quote that the Chief Kadhi sighted the moon.

(Laughter)

The Speaker (Hon. Ethuro): Order, Members He did not say he was the Chief Kadhi. He said that the moon was sighted in Tanzania. What I found strange is that it was during the day. Sen. (Dr.) Khalwale, I come from a region in this Republic where the moon provides more light because of lack of electricity. Therefore, I know matters about the moon. It is a bit difficult to sight it during the day, but I do not want to go into that debate.

Sen. Sijeny, we are on Statement (d) on the Order Paper.

CONSTRUCTION OF KIRINYAGA SEWERAGE PLANT

Sen. Sijeny: Mr. Speaker, Sir, Statement (d) is not yet ready, because we have not received it. I ask for at least a week; by Thursday next week.

The Speaker (Hon. Ethuro): Are you asking to respond on Thursday?

Sen. Sijeny: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Let us give you until Tuesday.

Sen. Sijeny: Mr. Speaker, Sir, give us until at least Wednesday.

The Speaker (Hon. Ethuro): This Statement was to be issued today; the time has basically expired. You can only conveniently seek for our indulgence for the next day of business. If you do a bit of work between now and Tuesday, you should be able deliver the Statement.

(Statement deferred)

STATUS OF THE MAKUTANO-NGURUBANI -KIMBIMBI-SAMSON CORNER ROAD

Sen. Sijeny: I stand guided, Mr. Speaker, Sir. As concerns Statement “e”, we are still waiting for answers to the further clarifications that were sought. Therefore, I would request for more time; at least until Thursday.

The Speaker (Hon. Ethuro): Proceed on statement “f.”

HARASSMENT OF BODA BODA OPERATORS IN NAIROBI COUNTY

Sen. Sijeny: Mr. Speaker, Sir, with regard to Statement “f”, we are not satisfied with the Statement provided. As a Committee, we have summoned the Nairobi County officials next week to give us further clarification. We, therefore, request for at least two weeks. We agreed to meet them on Thursday, which is the convenient day. We can give the answer in two weeks time.

The Speaker (Hon. Ethuro): Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, I agree with the Vice Chair that the statement provided is unfortunate. They do not dispute or agree with the penalty of Kshs200,000. We need to get to the bottom of this matter because it is serious. It is unfortunate how the Ag. County Secretary has answered this question.

What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Given that the Vice Chairperson has disowned the Statement because it is inadequate, is it in order for the questioner to quote excerpts of that Statement?

The Speaker (Hon. Ethuro): Sen. Elachi!

Sen. Elachi: Mr. Speaker, Sir, I did not quote the answers; I quoted what we had asked.

The Speaker (Hon. Ethuro): Order, Sen. Elachi. You are completely out of order. The Committee is directed to respond to your Statement in two weeks time. They have a justification for that time that they requested.

What is it, Sen. Elachi?

Sen. Elachi: On a point of order, Mr. Speaker, Sir. I humbly request that the Statement be delivered by next week. The more time we take, the more the *boda boda* operators in Nairobi will suffer. By the time we will be finishing this issue, some *boda boda* will have to pay Kshs400,000 to Nairobi County to retrieve their motorcycles.

The Speaker (Hon. Ethuro): Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, due to the time required for invitation and other logistics, it was not possible to fix a meeting today or earlier. We have agreed that on Thursday morning, we could invite her to a meeting for further interrogations. We still urge for more time. The directions that you had given are sufficient. If we invite her and she is satisfied, it will be good. We cannot do it before the two weeks.

The Speaker (Hon. Ethuro): The directive remains the same.

Sen. Karaba: Mr. Speaker, Sir, I am not convinced. The Vice Chair of the Committee suggests that the answers will be available in two weeks time. Whatever the time, I fear that the question on sewerage is not in her docket; that is why she is not getting the answer. This question could be directed to the Ministry of Water and Irrigation. The answer might not be available in a week’s time. Why can we not refer the questions to another Committee?

Sen. Sijeny: Mr. Speaker, Sir, if another Committee is given the work, we will have no problem. We can work together and seek answers. However, they have not told us that it is not within their docket.

The Speaker (Hon. Ethuro): Let us proceed along your lines first and then you will give us directions depending on the kind of response you get.

Did we say that both Statements (d) and (e) should be ready in one or two weeks’ time? What was your request?

Sen. Sijeny: Two weeks’ time, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): It is so directed.

(Statements deferred)

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE SECOND BASIS FOR EQUITABLE SHARING OF THE NATIONAL REVENUE ALLOCATED TO COUNTIES

The Speaker (Hon. Ethuro): Hon. Members, before we proceed, I have a message from the National Assembly on the approval of the second basis for equitable sharing of national revenue allocated to counties.

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 (3) and (4), I received the following Message from the Speaker of the National Assembly regarding the approval by the Assembly on the second basis for equitable sharing of the national revenue allocated to counties.

“Pursuant to the Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS on 21st April, 2016 the National Assembly received a Message from the Senate regarding approval of the second basis for equitable sharing for national revenue allocated to counties;

WHEREAS the National Assembly inadvertently failed to consider the Senate’s resolution within the 60 days contemplated under Article 217 (5) (a) of the Constitution, the effect of which the said formula is deemed to have been approved by the National Assembly in the form passed by the Senate;

NOW THEREFORE, in accordance to the said provisions of the Constitution and Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, in the circumstances the second basis for the equitable sharing of national revenue allocated to counties stands approved. Pursuant to Article 217 (7) of the Constitution, it shall be binding until a subsequent resolution has been approved.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Given that laws are not applied retrogressively. The House remembers that we passed that formula and until the National Assembly concurred, it had not assumed the full force of law. The House should also remember that the revenue for horizontal sharing of sharable revenue was passed in this House before this law came into force. Is it my understanding that this formula will not apply to the current financial year given that this law has now assumed the full force of law and it is coming at a time when the horizontal sharing of sharable revenue between the 47 counties has already been passed? Figures have been factored in and the actual money determined by this House. Is it, therefore, our understanding that this particular formula will not apply for this financial year?

The Speaker (Hon. Ethuro): You cannot be more than correct. We have to make progress. We hope that the other House will pass the formula in good time. They have waited for the duration to lapse and that is why we are concluding that this particular revenue sharing formula is now in force into the future; it does not operate backwards. What we have passed in terms of the division of revenue and county allocation of

revenue is based on that earlier formula, which was in force until substituted by this other formula. When the opportunity to use a formula comes, we will use this one and not the retired formula.

Next Order.

BILLS

First Readings

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILL NO.8 OF 2016)

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL)
(AMENDMENT) BILL (SENATE BILL NO. 9 OF 2016)

THE ASSUMPTION OF OFFICE OF GOVERNOR
BILL (SENATE BILL NO. 10 OF 2016)

(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Senate Committees)

[The Speaker (Hon. Ethuro) left the Chair]

[The Temporary Speaker (Sen. Ongoro) took the Chair]

PROCEDURAL MOTION

APPROVAL OF SENATORS TO SERVE IN THE PROCEDURE
AND RULES COMMITTEE

Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Madam Temporary Speaker. I beg to move the following Motion:-

THAT, pursuant to Standing Order Nos.176(1)(a), 177 and 179, the Senate approves the following Senators nominated by the Senate Business Committee to serve in the Procedure and Rules Committee-

Sen. David Ekwee Ethuro	-	Speaker of the Senate – Chairperson
Sen. Kembi – Gitura	-	Deputy Speaker
Sen. Elizabeth Ongoro	-	Member, Chairperson’s Panel
Sen. Peter Mositet	-	Member, Chairperson’s Panel
Sen. (Dr.) Wilfred Machage	-	Member, Chairperson’s Panel
Sen. Stephen Sang’	-	Member, Chairperson’s Panel
Sen. Martha Wangari		
Sen. Naisula Lesuuda		
Sen. Judith Sijeny		

The matter of the business of this House as well as issues to do with the Rules and Procedures has been until now managed by one Committee, the Rules and Business

Committee (RBC). That has presented a major challenge being that the RBC has been overwhelmed with a lot of work.

Secondly and even more critical from my point of view, the Members of the Speakers Panel who assist the Speaker to preside over this House have not had a forum where they can meet, discuss and agree on how to run this House from time to time. This has its own disadvantages. It is in that context that this Motion has been introduced mainly to split the RBC into the Senate Business Committee and then the Rules and Procedure Committee becomes a separate Committee mainly consisting of all the Members of the Speakers Panel plus one or two other Senators, so that the House is fully represented.

It is not a new Committee as such because majority of them, except three; two from the Majority side and one from the Minority side, the rest are already Members who are serving in the Chairperson's Panel.

Under the current Constitution, Article 124, each House of Parliament is empowered to create committees and also to make Standing Orders for the orderly conduct of business. Further to that, the Standing Orders of the Senate provide that the Standing Orders which are to help us run this House may be amended first by the initiative of the RBC, and secondly by the initiative of a Senator. It is in that context that the Senator for Migori County, Sen. (Dr.) Machage, suggested the amendments supported by 16 other Senators. These amendments are to split the RBC into the Senate Business Committee and the Procedure and Rules Committee which as I have said is supposed to deal with the procedural issues and how this House is run.

Allow me to emphasise that this is not a new Committee, but it has been set up simply to separate the House Business Committee which is the agenda setting Committee of the House from the issue of the day to day procedural and administrative functioning of this House. The majority of the Members in the proposed RBC are Members of the Chairperson's Panel. There are three additions, two Senators from the Majority side and one Senator from the Minority side.

This is a routine Motion and an earlier Motion for the split was passed by this House. I, therefore, do not want to say much more than I have said already.

I beg to move and I request the Senator for Kakamega, Sen. (Dr.) Khalwale to second.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I rise to second this Motion. I want to agree with the Senate Majority Leader (Sen. (Prof.) Kindiki) that this is purely a Procedural Motion that has given entitlement to both sides of the House in accordance with the traditions of this House. Therefore, there would be no reason whatsoever for the opposition to contest it.

I second.

(Question proposed)

Sen. Obure: Thank you, Madam Temporary Speaker. I stand to support this Motion. As I understand, the objective of this Motion is to try and facilitate the orderly and efficient conduct of business. The names proposed are names of our own colleagues here, we know them well and we know that they have the capacity and the will to sit on this Committee and transact business on our behalf.

Madam Temporary Speaker, I hope that once they assume office, they will facilitate the enhancement of the manner in which we conduct our business in this House. I congratulate each one of those proposed and wish them the best.

The Temporary Speaker (Sen. Ongoro): I think there is a problem with our system. It is not showing requests on the screen. Therefore, we will revert to analogue way of doing things.

Sen. Sijeny: Madam Temporary Speaker, I rise to support the Motion. This just confirms that the Senate is making things better for the next Senate by setting up structures. This structure will enhance the efficiency of our work. It is very important to delegate some of the responsibilities because there is a lot of work to be done. We have been seeing delegations coming here to do benchmarking. We know legislation process changes with time. Therefore, with the constitution of this Committee, we will be more efficient in our work. It is constituted of team players who will work hard for the benefit our country.

I beg to support.

Sen. (Dr.) Machage: Madam Temporary Speaker, the omission of the creation of this Committee by the Senate was a mistake. This is a Committee that has always existed even in the last Parliament. It is a Committee that also exists in the National Assembly. It was an omission that should not have been overlooked. Therefore, the Members of the Speaker's Panel noted that anomaly and nominated me to present this request to this House. Therefore, I am happy that this House had considered and created this Committee. Therefore, by proposing membership of this Committee is really something that was long overdue.

I beg to support.

Sen. Elachi: Madam Temporary Speaker, I also rise to support this Motion for setting up this Committee. I appreciate the fact that there a quite number of women who will ensure the business of the House will run smoothly. I hope they will learn a lot from your experience. You have been instrumental in the running of this House.

The most important thing to note here is that this Committee has a substantive number of people who will deliver and make sure Senate asserts its position always.

Sen. Obure: On a point of order, Madam Temporary Speaker. Did you hear what Sen. Elachi said? She appreciated that there is a considerable number of women in this Committee. I thought we only have Senators here, not women.

The Temporary Speaker (Sen. Ongoro): Sen. Obure, we have Senators in this House, but that does not negate the fact that we have women Senators. We, as women Senators, do not feel offended by being referred to as women Senators. Therefore, there is nothing out of order with that reference.

Sen. Chelule: Madam Temporary Speaker, thank you for giving me the opportunity to support this Motion. I am in support of this Motion because the Senators who have been listed to transact business on behalf of this House are Senators who I know will deliver. As Sen. Elachi has mentioned, we feel represented as women Senators to this Committee. I know that any issue related to women will be articulated adequately.

I, therefore, beg to support this Motion.

The Temporary Speaker (Sen. Ongoro): There being no further requests, and this is not a Motion that affects counties, I will proceed to put the Question.

What is it, Sen. Ong'era?

Sen. Ong'era: On a point of order, Madam Temporary Speaker. Thank you for giving me your indulgence. I came in late and I was not aware that you had asked us to raise our hands. I would like to support this Motion and say from the outset that it is long overdue. We needed to have a RBC right from the outset when we started this Session in 2013. Therefore, I welcome that the RBC has now seen the sense of it and created another Committee for Procedure and Rules and called the other one the Senate Business Committee. I am also happy to note that the gender threshold has been met and we have distinguished lady Senators and not women as my colleague Sen. Elachi referred to them.

I am aware that all the Senators listed are capable and will represent us well. I request that they make rules for this House that will serve posterity as we conclude our term as the first Senate in the new Constitution. I am sure that these rules will stand the test of time and will be used even after 100 years and we will be remembered as the pioneers for setting up the Procedure and Rules Committee.

I beg to support.

The Temporary Speaker (Sen. Ongoro): The system is still down. Is there any other Member who is interested in making contribution?

The Senate Majority Leader, it is a blessing that you are in the House. I almost put the question without giving you the opportunity to reply. Kindly proceed.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move.

The Temporary Speaker (Sen. Ongoro): I will now proceed to put the question.

(Question put and agreed to)

Next order.

BILL

Second Reading

THE MEDICAL PRACTITIONERS AND DENTIST (AMENDMENT)

BILL (SENATE BILL NO.2 OF 2016)

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Lesan is not in the House. I, therefore, defer the Bill.

(Bill deferred)

Next order!

The Clerk-at-the Table: Order No. 13; Committee of the Whole.

The Temporary Speaker (Sen. Ongoro): Owing to the numbers, we cannot proceed with the Committee of the Whole. Therefore, we will defer Orders Nos.13, 14, 15 and 16.

COMMITTEE OF THE WHOLE

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 20-15)

THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL
(SENATE BILL NO. 3 OF 2015)

THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL
(SENATE BILL NO. 14 OF 2015)

(Committee of the Whole deferred)

Next Order!

BILL

Second Reading

THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.38 OF 2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to move that that The Basic Education (Amendment) Bill (National Assembly Bill No.38 of 2014) be read a Second Time. This is a Bill from the National Assembly. It amends The Basic Education Act in several ways. I take this opportunity to highlight some of the most fundamental amendments that this Bill introduces to The Basic Education Act.

First, I would like to refer to Clause 5 of the Amendment Bill. The Bill introduces a new Section 25(A) to establish a Sub-County Education Board and provide for its composition. As hon. Senators are aware, the current Basic Education Act creates a number of structures right from the National Education Board to County Education Boards. It is desirable after strong representations from all stakeholders in the education sector to have at the sub-county level, an education management organ in the form of Sub-County Education Board. Sub counties are the former districts. That is one of the amendments.

Clause 5 creates the Sub-County Education Board. It also provides for members who will sit in that Board. The members are modelled along the same lines as the current membership of the County Education Board but at the sub-county level. In other words, the usual stakeholders are represented. There is a chairperson and twelve other people including the Sub-County Education Officer who will be the secretary to the Board, a representative of the County Executive in charge of education, a representative of the Teachers Service Commission (TSC), a representative of the Private Schools Association, two representatives of trade union representing the interest of teachers and where applicable, one person each representing jointly the National Council of Churches of

Kenya (NCKK) and the Evangelical Fellowship of Kenya and also a representative of the Kenya Conference of Catholic Bishops (KCCB) and the Muslim Education Council, one representative of the persons with disability, two members nominated by Primary School Head Teachers Association and the Secondary Schools Principals Association and the Deputy County Commissioner representing the national Government. Therefore, basically, it replicates the County Education Board at the sub-county level.

The second provision is Clause 6. It amends the current Section 26 of the Basic Education Act and provides new sub-Sections. The new sub-sections provide for roles of county governments. In essence, that amendment compels the TSC to assign teachers to teach in Early Childhood Development Education (ECDE) facilities, village polytechnics, home craft centres and child care facilities. There is a big problem in terms of standards.

As hon. Senators know, it is true that early childhood education as well as education in village polytechnics is a devolved function. It is also true that education policy and teacher issue through with the standards and teacher training is a function of the national Government. At the moment, across our counties, the quality, standards and compensation arrangement for teachers in early childhood institutions as well as village polytechnics is varied from county to county. Each county advertise different qualifications for ECDE teachers and criteria for instructors in village polytechnics. This is not good for the education of our country. The instructions that these children, pupils and students in village polytechnics and ECD institutions get should be standardized; one curriculum and as far as possible, the same teachers. So, this amendment which has been negotiated among stakeholders will ensure that the issue of allocation of teachers is borne by the TSC which is the constitutional organ; an independent commission that is supposed to deal with the issue of training, posting and payment of teachers' salaries countrywide.

Madam Temporary Speaker, Clause 7 amends Section 27 which is on the role of sponsors. As you are aware, religious institutions whether Christians or of Muslim faith, have played a huge and irreplaceable role in the promotion of education in our country. Since independence, many schools and education institutions have been under the sponsorship of religious institutions. This role has been symbiotic and supplementary to what the Government has been doing to promote education in our country. As Kenyans, we appreciate the role that has been played by churches, especially the Catholic Church and a number of other mainstream churches. Going forward, I hope we will see the newer churches which have been established recently to also engage in sponsorship and promotion of education in our country, especially with regard to supporting schools with pastoral programmes. It is not enough to teach a student mathematics, physics and civics. You also need to take care of the spiritual needs. I do not think the Government has any capacity to offer spiritual nourishment to students and pupils. It is in that connection that sponsors have for a very long time and in the future continue to play a critical role in the management and the support especially of a spiritual nature to our schools.

So, clause 7 amends section 27 to allow sponsor to participate and offer proposals on matters of syllabus, text books, digital content during curriculum development. When there is a curriculum review taking place like recently there has been one in our country, where there is a spiritual sponsor, Christian or Islamic, they should have a role to comment on things to do with syllabi, especially the teaching of religious education, for

example, the churches would want to have a say in the syllabus that is taught to our children.

The churches must have a say in the syllabus that is taught to our children and students in the study of Christian Religious Education. The same applies to Muslim sponsored educational institutions, when it comes to teaching Islamic Religious Education. These are matters where the sponsor should have a role. The other new role for the sponsor is to offer material and financial support to institutions of basic education with regard to infrastructure improvement or any other project to support academic programmes.

The sponsor should have a role to support what the Government is doing to provide infrastructure. That is recognized in the Amendment Bill. Clauses 10 and 11 amend Section 39 of the Basic Education Act to compel the National Government to ensure that all children and students who are learning in basic education institutions complete their studies.

The Constitution of Kenya adopted in 2010 provides for compulsory basic education and the right to basic education, especially with regard to Article 43 of the Constitution which is part of the Bill of Rights. The basic education is compulsory and for it to be compulsory, it must eventually be free.

Madam Temporary Speaker, basic education is defined as that education from early childhood to secondary education. It is in that connection that this Bill is increasingly obligating the Government to ensure that as much as we have free primary education, secondary education should also be subsidized with a view to ensuring that every student in secondary school is able to complete their studies so that we can give effect to Article 43 of the Constitution that demands that basic education shall be free.

That provision in Article 43 is borrowed from international treaties and conventions which are part of the laws of Kenya. In particular, it is borrowed from the International Covenant on Economic, Social and Cultural Rights, which Kenya ratified on 1st July 1972 and which is now part of the law of Kenya. To give it effect, therefore, Clause 10 and 11 provide that the Government through the Cabinet Secretary (CS) for Education must take measures to ensure that children who qualified to public secondary schools, but cannot afford to pay fees are supported to complete school.

Madam Temporary Speaker, in this connection, the Government and the CS must ensure that they mobilize resources for provision of bursaries for deserving but needy students. In the past, the issue of bursaries and Government support to pay fees for secondary students has been optional. It is now going to be a statutory obligation.

Clause 12 has a new subsection which provides that the head of a basic education institution including secondary schools, by the end of every February must submit to the Sub County Education Board which is created under this supplementary Bill, the list of all learners and their performance, including identities of students in secondary schools who are likely to drop out of school in the subsequent year, for lack of fees.

Madam Temporary Speaker, the obligation of the Sub County Education Board which is now created here to support the work of the County Education Board will be to vet that list because we have had instances where secondary and primary school managers inflate things and concoct figures. Therefore, the role of the Sub county Education Board will be to vet and find out exactly who are the deserving needy cases from those lists from heads of institutions and recommend them for Government support.

This is a step in the right direction. I look forward to the day education will be free, not just in primary and secondary school, but all education, like it is the case in the Federal Republic of Germany and in all Scandinavian countries such as Finland, Norway and Sweden. I long for the day in this country when a child can go to school and learn free of charge from early childhood to university.

In fact, in countries like the ones I have mentioned, education is free up to PhD level, and that is the dream that we should have for our nation. Going forward, I hope that we will be in a position to even extend the support, now that we are talking about basic education. Government support should not be limited to public institutions but also to students in private institutions. The reason being; we do not have private students, but only private institutions. An institution can be private but the student is not private.

A student is a Kenyan and the fact that we do not have enough space in secondary schools to absorb all our children should compel Government to support all learners, whether they are in public or private schools. The people offering private education are helping the Government to meet its obligations, and they should therefore not be punished by virtue of the fact that they have invested in private education. That should be something for the future.

Madam Temporary Speaker, the desire of the Jubilee Government is to realize the Constitution, especially with regard to compulsory basic education as provided for in Article 43 of the Constitution. The courts have already given direction on the issue of socio-economic rights, including the right to education and they have said that in this country, and in the few others which have similar provisions, not many countries are bold enough to constitutionalize socio-economic rights in the Bill of Rights. Even very advanced and rich countries have avoided including socio-economic factors in the Bill of Rights to avoid the economic cost and the fact that it is argued that sometimes you do not want to put things in the Constitution that cannot be realized.

Outside Kenya, I know of South Africa which has identical provisions on the right to basic education. In the other countries, they pursue these things as objectives of national development and policy. In some countries such as in the constitutions of Namibia, Peru and Spain, these socio-economic cries such as health and education are provided as guidelines that should guide state policy as opposed to enforceable human rights under the Bill of Rights.

I think our Constitution is very progressive and ambitious, but I think we would rather have an ambitious Constitution, struggle to implement it, than to have nothing at all. I am very proud when I look at the quality and the standards in our Constitution.

Madam Temporary Speaker, because of time, allow me to highlight two or three other clauses. The first is Clause 13, which just amends section 56(1) of the Basic Education Act to include more members into the county education board. This will include four persons elected to represent parents or pupils in the school or from the local community in the case of a secondary school. The head of the institution should be a member of the County Education Board as the secretary to the board.

Clause 14 amends Section 95 of the Basic Education Act. This section is about the rules. The Cabinet Secretary (CS) for Education may make rules to implement the Basic Education Act. If you look at the powers that are provided for the CS, they are wide and swopping powers good enough because we need rules on issues to do with discipline. At the moment right now, there is debate and I heard the veteran teacher of

Geography, now Senator for Kirinyaga, participating in issues to do with the discipline in schools and saying that we need to reintroduce corporal punishment. Of course, I disagree with him but I also respect that view from him and other Kenyans who think that we should cane our children to improve on their discipline.

Madam Temporary Speaker, the CS, therefore, has wide powers to make rules on discipline and issues of school management. This will help us have less of what we have seen in the past three years where you have heard CSs making roadside declarations and issuing orders on some street corner. I am not implying any particular CS. Of course I am very happy with what Prof. Kaimenyi did and even the current CS, Dr. Fred Matiang'i. They are trying their best but this provision will help them. Whatever regulation they make for the implementation of the Basic Education Act must be within the law. However, because they have wide powers to make those regulations, the stakeholders must be consulted and be part of those regulations. This is what this Clause 14 is doing; to amend Section 95 of the Basic Education Act.

When the CS responsible for Education makes any regulations for implementing the Basic Education Act especially on matters of curriculum, discipline in schools, pastoral programmes and those kind of issues, there is a new requirement there that they must consult the relevant sponsors. If you are making regulations touching on pastoral programmes, I see no reason why the church sponsoring the school should not have a view. If it is a Muslim institution, I see no reason why the leadership of the Muslim faith should not have a voice because pastoral programmes are religious in nature and the Government has no capacity to determine content of religious programmes such as pastoral programmes. So, the CS must make those regulations in consultation with the relevant sponsors but only with regard to regulations touching on integration of madrassa and pastoral instructions integrating them into the formal education system and related matters.

Madam Temporary Speaker, therefore, this Amendment Bill has been the subject of widespread, intensive and protracted consultations between the Government and stakeholders. Particularly, I know of the Kenya Catholic Bishops Episcopal Conference, the Evangelical Fellowship of Kenya as well as the Muslim organisations that deal with the education matters and they have been following them up. They were to my office as late as last week. They have traced this Bill from the National Assembly to this House.

The Government is satisfied with the recommended changes. I have said that some of the changes have come from stakeholders. Others have come from the Government to strengthen its obligations to provide free and compulsory basic education up to Form Four level. My desire as a Kenyan and as a parent is that in the foreseeable future, it should be possible for a child to go to a nursery school and study for free up to secondary school. In the not so distant future, university education should also be free. That is possible and it can be planned.

The Jubilee Government has already progressively increased capitation in secondary schools over time. In fact, the intention of the Jubilee Government is to ensure, in the next two years, that they eradicate the payment of school fees in all day secondary schools as part of progressive realisation to free basic education. The intention is, by next year and in the subsequent year, to actually make it possible that in a day secondary school, a student should not pay school fees and thereafter subsidize further with the hope of eradicating fees in the secondary schools in the long term.

Madam Temporary Speaker, without much ado, I beg to move. As usual this afternoon, I request my good friend and senior in life – of course his song is sang before me and he went to university before I did – Dr. Khalwale, Senator for Kakamega to second. I thank you.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, proceed.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I rise to second this very important Amendment Bill. I also thank the Senate Majority Leader high as he sits in the echelons of power for acknowledging that I am his senior. However, he should not be modest but he should also admit that I am his senior in marriage and senior in getting children. In fact, I have a granddaughter and a grandson. I am very senior indeed.

(Laughter)

Madam Temporary Speaker, as I second, I think there is room for me to request the Senate Majority Leader to send my greetings and the greetings of the people of Kakamega County to the CS for Education, Dr. Fred Matiang'i. However, much as we appreciate the good work he is doing, he should also be measured. He should not be overzealous to direct that my wife cannot go to school to pray for my child when they are preparing to sit examinations. That is to allocate himself powers that he can never have. Why does he want to stop our children from being prayed for? Which parent can go and sneak examinations papers on prayer day to their children? We do not like that. We want to continue praying for our children in the only way we know. Personally, I do not know how to pray but whenever I go to visit my children on prayer day, I repeat to them what my father used to tell me. My father used to tell me that he did not know how to pray but his grandfathers proved themselves using the spear. He used to tell me that this days, you prove yourself using the pen. So, I repeat those words to my children and it makes a big difference.

Madam Temporary Speaker, as I second this Bill, I would like to draw the attention of the Senate Majority Leader to Clause 3. Looking at how evolution is taking place in the country, it is becoming clear that even without the allocation of money for the function of education to governors, all the 47 governors are trying to do something for their schools on matters of infrastructure. Probably, the Senate Majority Leader should think whether or not this is the time for us to devolve funds from the national Government to county governments meant for infrastructure development, provision of instructional material and the other attendant purposes.

Madam Temporary Speaker, I want to support the Senate Majority Leader in Clause 3 (1) (l) which it states that one of the functions of the County Education Board shall be to-

“maintain a data bank of all students who are ranked in the first quartile of the constituency in the national examination and the primary level who due to inability to pay school fees fail to gain entry into or complete education in a public secondary school.”

This is clearly speaking to the issue of ranking. If you are trying to discover who is in the first quartile in a constituency, it simply means that you will rank the schools in that constituency and by extension, in that county. It is, therefore, a case for us to reintroduce ranking in all our schools at the sub-location, location and ward levels up to the national level.

I would like to further support the Senate Majority Leader in Clause 4, which speaks to the composition of the county education board. I want to beg the Senate Majority Leader to reflect. He says that the appointments shall be done by the Cabinet Secretary; I have no problem with that. The people under sub-clauses (a), (b), (c), (d) and (e) can well be appointed by the Cabinet Secretary, but he does not have the kind of information that other public officers at the county level have on possible suitable personalities to serve on this board. I want to propose that from (f) to (l) those appointees be appointed by the Cabinet Secretary after they have been nominated by the governor. This is because the governor is closer and is more likely to identify suitable people.

Further, I would like to support the Senate Majority Leader in this Bill in Clause 4 by contributing something on sub-clause 3, on page 5, which speaks to the effect that all members of the county education board shall have a minimum qualification of secondary education certificate. Why would you want to have a pilot flying innocent passengers from Heathrow, for eight hours into Jomo Kenyatta International Airport (JKIA), when the qualifications of that pilot are perfect, but the qualifications of the other members of the crew on the aircraft are suspect? Education is a serious aircraft. In fact, it flies further than the distance between Heathrow to JKIA; it flies into the future. Therefore, I want to beg that a county cannot lack people with good education to sit on the county education board, to fly the children of that county to the highest destination that they can possibly achieve. Therefore, I want you to consider increasing the academic qualifications. The members who sit on the county education board should have good education, so that even when they stand to make a speech and they are introduced as members of the county education board, they will be women or men of golden letters who can be copied by the children. Therefore, I want to insist that unless under exceptional circumstances, where possible, these people should have a minimum of university education. If we are talking about a minimum of university education in Parliament, why can we not expect the same of people with a greater role on matters of education at the county education board?

Madam Temporary Speaker, I support this Bill in Clause 4, but want to make an addition to the membership. I believe that the composition is limited because an important person has been left out. I think the County Executive Committee (CEC) Member in charge of education must sit on this board, because he or she is an important person. They are the nexus for the resources from the county treasury to schools and programs. I have seen in this Bill a proviso that they shall be given a sitting allowance, yet it is not said where the sitting allowance will come from. Surely, if it will come from the county government, as it should, then this is one of the best people who can give accurate information to the CEC member for finance in the county government. I propose that CEC member for education must sit as a member of the board.

I want to support further by speaking to sub-clause 5 that attempts to introduce 25 A, which simply creates a board at the sub-county level. I want the same arguments that I have carried above to hold on this particular one so that in these ones, at the sub-county level, the appointments are even more directly concerning the county governor. Let us allow the county governor to assist, not by appointing but by nominating, and then the Cabinet Secretary can do the appointment.

In sub-clause 4, there is the requirement that all members of the sub-county education board shall have a minimum qualification of secondary education certificate. I would not insist on a degree because of the challenges of education at that particular level

of sub-county. I would propose that it should be somebody with at least a post-secondary certificate in education. We are talking about retired teachers, clinical officers, technicians, engineers and nurses. These are the people who will add value and be helpful.

I also want to add two other members to the sub-county board. If the Member of Parliament, that is, the Senator and Member of the National Assembly are sitting on the county education board, there is everything to gain if you allow the Members of the County Assemblies (MCAs) to sit. These are members who have direct access to parents and know about, for example, the children that you have spoken to in the first quartile, who could not qualify because of school fees challenges. These MCAs will add a lot of value. The Members of Parliament, like the Chair, who sat in the previous arrangement under the old Constitution, know that the councilors used to sit on these boards and they were adding value.

I want to add a seventh member. The county government has to be represented on this board. We cannot have the Cabinet Secretary (CS) Ministry of Education alone because he will be bogged down. For example, in Kakamega County, there are twelve sub-counties. Therefore, it will be too much for one person. I propose that the person to sit there at this level to be the County Education Officer (CEO).

It has been my pleasure to second this Motion. I want to conclude by congratulating the clerks of the National Assembly and the Senate for forwarding this Bill to us. It is clearly becoming apparent the Senate Leader of Majority that the turf wars that wasted so much of our time are starting to ebb away and that bicameralism is finally taking its route in legislation in this country.

I strongly second the Bill.

(Question Proposed)

Sen. (Dr.) Machage: Thank you, Madam Temporary Speaker. I support this Bill. To me, this Bill is anchored in streamlining laws to help devolution work in our country. These structures will be useful in county and sub-county levels.

I will concentrate more on the situation where this Bill might be misused when it becomes an Act of Parliament to try and remove some functions from the county governments as stipulated in Article 9(2). This has to be read carefully. Maybe, the lawyers will be able to tell us where the tides will meet. If you look at the amendment of Section 26, part 6 of this Bill, of the principal Act, is amended by inserting the following new sub-section immediately after Section 3(3). They have put Section 4 which says:-

“Pursuant to Articles 235 and 237 of the Constitution, the Teachers Service Commission shall assign teachers to the public institutions of basic education and training used for conducting pre-primary education, child care facilities, home craft centres and village polytechnics”.

I find a little clash on the functions of the county government as stipulated to us under Schedule 4(2), on the functions of the county government. Clause 9 says:-

“Pre-primary education, village polytechnics, home craft centres and childcare facilities will solely be a function of the county governments.”

This is a section that I would want to be convinced by the Mover of the Motion during his reply where the contradiction might end. This is because I see mischief where

this amendment of the Act might end up taking out the powers of the county governments in the management of the institutions that were actually assigned to them by the Constitution. So, the controversy of the Act and Article 237 of the Constitution and Part II of the Fourth Schedule, Clause 9 should clearly be analysed and defined. Otherwise, I find the approach to the regulation of education at that level to be a noble idea when I think in terms of policy and harmonization of education system in this country.

Sen. Elachi: Thank you, Madam Temporary Speaker. I support this amendment Bill. In the last three years when Sen. Kagwe was the Chairperson of Education Committee, they made sure that the Early Childhood Education Centres (ECEC) were started in many parts of the country. I want to thank the current Cabinet Secretary (CS), Ministry of Education, for the good work he is doing. We have many challenges facing our children.

I support the idea of having county education boards because they will facilitate the full realisation of all children to access quality basic education. They will also ensure all institutions of basic education and training have a conducive learning environment. As it is now, many of our schools face many challenges in terms infrastructure. We, as parents, do not really understand our children because most of the time they are with their nannies and teachers.

We have had conflict with the public schools, private schools and faith based schools when it comes to admission. These boards will act as a bridge between various stakeholders and schools. They will address the thorny issue of management of schools in their counties.

[The Temporary Speaker (Sen. Ongoro) left the Chair]

[The Temporary Speaker Sen. (Dr.) Machage took the Chair]

Mr. Temporary Speaker, Sir, Clause 12 says: -

“Every head of a public institution of basic education and training shall not later than 28th February of each year develop and submit to the Sub-county Education Board and a copy to the County Education Board, a list profiling the performance and conduct of learners in their institutions in the preceding year whose parents or guardians are unable to pay school fees for.”

I thank God because hon. Members of the last Parliament did a lot with their Constituency Development Fund (CDF). They made sure that students stayed in school by paying their school fees. We need to laud them for that.

Now that we have restructured the CDF, I hope Members of the National Assembly will concentrate more on education of our children. It is a pity to see a student who qualified to join Alliance High School learning in a day school in a village because his parents could not to take him to school of his choice. We expect hon. Members to use their CDF money wisely and pay school fees for the needy students in their constituencies. If they do so, those young men and women when they complete their education, they will transform their villages. Now that we have a lot education infrastructure across the country, let us concentrate on equipping them and posting teachers there, so that our students can reap maximum benefits.

Mr. Temporary Speaker, Sir, I participated in two different functions with a governor to raise funds for the needy students. In one functions, the governor said he had spent more than Kshs75 million in paying school fees. That got me worried because education is a national function and we have the CDF money. Poverty is very much entrenched in our society. Therefore, there is need to assist the less fortunate among us so that they can take their children to school. I hope these boards will monitor and make sure children from disadvantaged background complete their education. I do not want to see the prevailing situation whereby children of the benefits from the CDF kitty. That will be very unfortunate.

We also need to request our counterparts from the National Assembly to give more money from the CDF for purposes of education and not the Kshs2,000 as they having been doing in the past. This board must ensure that they track the students they are supporting to enable them finish school. The role of the board should not just be to write reports. They should ensure that they give the report to the relevant authorities that are able to pick up the matter and ensure that the children receive sponsorship to enable them to complete their studies.

Mr. Temporary Speaker, Sir, Clause 11 of the Bill states that when Section 39 of the principal Act is being amended by inserting the following new paragraph immediately after paragraph "h" that puts in place measures to ensure that children who meet the criteria for admission to a public secondary school, but fail to gain entry into or are likely to drop out on account of inability to pay school levies, are supported to complete secondary education. That paragraph captures what I was saying. We need to have a database of every bright child in the village. If we have 30 needy cases in Sagana Village, the board must make sure they complete their education. It is unfortunate to see young children selling groundnuts on the streets of Nairobi in the evening. We must have structures which will help those children from Kawangware and Mathare to go to school. They should not be selling grounds on our streets or we use them to commit crimes. We, as leaders, must change ourselves and our values if we want our children to change.

I beg to support.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to support this Bill from the outset. I would like to give my own reservations based on the experiences that I have had on basic education since my election. We call it basic education, but it is not very valuable to a majority of the students in both primary and secondary schools because of lack of facilities. We participate in the budget making process. Therefore, I know that somebody somewhere is not facilitating the secondary or basic education as it should be.

There has been a clamour for education to be devolved. The reason that people are clamouring for education to be devolved is because it appears that the system is not working. The management of education at the national level does not appear to have any effect in some village somewhere in Makeni. As a result, basic education in Kenya, particularly in Makeni County is a mirage. It is not basic. I have looked at this Bill and it is yet another attempt by legislators to create as many structures as possible in an attempt to see whether we can achieve basic education. However, the basic minimum has not been achieved.

Mr. Temporary Speaker, Sir, the functions of the county education board is to facilitate the full realization of the right of all children to access basic education. What does that mean in law? Facilitating is not making sure that every child attends school or

that teachers are in school. However, facilitating is ensuring that each school has got books, laboratory equipment and basic minimum standards.

I will propose an amendment on the functions of these county education boards. It is basic minimum standards for basic education. What is that? It means that every primary or secondary school lab must have five microscopes. Every school or lab must have a minimum of five Bunsen burners so that then we can talk about basic. Those are basics. When you upgrade, you ask whether a school has a library. That is beyond basic. However, for instance, does Class One have enough books to facilitate because it presupposes that this board must go beyond just merely doing technical things? It is providing even the funding. So, I will propose an amendment for basic evaluation. This county education boards must give a report whether it is to the Ministry of Education or Parliament but it must say, for instance, Makueni County has 900 primary schools and 339 secondary schools. In each school, First Schedule, what facilities do they have? For instance, on (a), tick, tick, tick. Then, this would be facilitation so that in the following year, this board is in a position to tell the Ministry of Education that for purposes of school "X", there is basic education, we need you to do "X", then our work as Senators and as oversight is to check that is done.

It concerns me that in Clause 3(1)(l), we might in our quest, to attempt to have basic education, create discrimination when this Bill proposes that they shall maintain a databank of all students who are ranked first in the constituency in the national examination at primary level and who due to inability to pay school fees fail to gain entry or complete education in public secondary schools. Maybe the Senate Majority can answer this. What is the purpose of maintaining a databank of people who did not complete public secondary schools or maintain a data bank of persons in primary level who are unable to pay school fees? How will you assess that the inability? What is inability in this case? I am aware that constituencies are offering bursaries. They might offer bursaries of an equal amount of Ksh5,000 to everybody. Does that mean that person who has been offered a bursary can pay school fees? It is not possible. Who will do this? In some cases, you will discover that, in fact, the inability is everybody. You will find schools where every parent is unable to pay school fees. So, what is the purpose of maintaining that data? Should we not be looking – I had suggested this and it used to happen – my governor, my late father and many other professors and people who studied in the 1960s went to school through a scholarship plan for students who did well.

It is not a contradiction to have this category of persons who you say have performed very well being offered full scholarships. That is what should happen, not to maintain a databank. I even have one and it is not helping because the problem is not having the resources. I am glad that the Senate Majority Leader mentioned this. In future, this inability should not arise. They should not be looking at this as the way of the future. If the Senate Majority Leader says at some point, there will be free secondary education – I am glad the Senate Minority Leader has walked in – so that as a coalition, we can offer that as an alternative for our manifesto for election into Government, that, free secondary education should not be a mirage. We should not say at some point, we will do it. We should say, next year, 2018, you will start free secondary education. We can still maintain the category of good students and offer them scholarships like other people. That is why I said the maintenance of a databank will not help.

Clause 12 states that every head of a public institution of basic education and training shall not later than 28th February of each year develop and submit to the County Education Board a list profiling the performance and conduct of learners in their institution, in cases where parents and guardians are unable to pay school levies and, therefore, more likely to drop out. Chances are that you would find that in some schools – I know many that this would be everybody. So, the idea should be that the amendment should give hope to the poor parents of this country that they will get education irrespective of their status.

It concerns me that we concentrate on educating students - I was hoping that the Senate Majority Leader would be here to respond to this. Sen. Musila has been at the fore front since 2004 about the withholding of certificates. To date, certificates are still being withheld. It is illegal. I remember the Deputy President making a declaration that the money would be paid. The money has never been paid. Students are still waiting. So, it is a contradiction in terms to say that you will profile students who are unable to pay but you cannot give an undertaking that the certificates of persons who have completed education should not be withheld. I will propose an amendment to this Basic Education Act that it becomes a minimum fundamental principle that you cannot withhold a certificate by virtue of nonpayment of school fees in secondary schools. That is why I said the idea should be not what basic education is but what basic standard is. Basic standard in my submission is not to withhold certificates. The Majority Leader mentioned about discipline. It must be addressed. We must find a method in the Basic Education Act to tell the students who are burning schools that they are criminals because arson is a criminal offence.

Mr. Temporary Speaker, Sir, you have seen people charged in court for arson. During the demonstrations, others were charged with arson as a criminal offence. Should we not be as stringent and bold enough to say that burning is an offence punishable by law and where there is an exemption of punishment to students, that exemption would not be given to persons who deliberately buy kerosene and torch dormitories and we go back to business as usual? That cannot happen. That problem is being transferred to parents, you and I. You will be called to Harambees to buy beds of students who planned to burn a school. I have given myself an undertaking that I will not attend any of them.

(Applause)

I do not see why I should help people who want to behave like criminals. I have said that what we have failed to do, and what I am hoping that this Senate can do in this Bill, as small as it is, is to provide basic standards of education and then have all these committees that are so many, with very many people as members, getting allowances to check on basic standards be done away with. We cannot be the ones to provide a framework for people to earn allowances for sitting.

We should provide a schedule and say, go and do task x, y or z. We want to see it so that may be in ten years' time, we can look back and say that we have provided a formula or a method of ensuring that secondary and primary schools education is not a preserve of Senators, leaders or the middle class but every Kenyan should be able to enjoy basic education.

Mr. Temporary Speaker, Sir, you will be surprised to know that Early Childhood Education (ECD) is possibly the most expensive component of education. People are making money out of day schools, which is a basic thing. To have children who sleep and you teach them the alphabet is costing Kenyans a lot of money because we have never set standards. It is those standards that will make this country great and not committees or county education boards, because in the end, Article 53 says:-

“A Child’s best interests are of paramount importance in every matter concerning the child”.

Let us make sure that Article 53 of the Constitution of Kenya reflects in the Basic Education Act. I am not satisfied that it does in the present form.

The Temporary Speaker: (Sen. (Dr.) Machage): Sen. Sang.

Sen. Sang: Mr. Temporary Speaker Sir, I rise to support this Basic Education (Amendment) Bill. The Bill speaks itself to a number of very critical issues. The Constitution provides that basic education should be available to all children in the Republic. If you look at the environment and the situation in the country today, very few young Kenyans are able to enjoy basic education.

We have several challenges within the basic education sector. I want to speak to a number of issues that have been raised within this Amendment Bill. One is the establishment of the County Education Board. This is very important. If you look at the functions of this Board, and the qualifications of the persons to sit in the board, section 4(1) says that:-

“Every County Education Board shall consist of a chairperson and 17 other persons appointed by the Cabinet Secretary---“

I have a problem with the numbers. A County Education Board of 18 members including the chairperson is a bloated committee for them to transact any meaningful business. We can reduce to a functional figure to enable this board to transact business. However, I have an even bigger problem with the qualification; the section on qualification that is Clause 4(3) says:-

“All members of the County Education Board shall have a minimum qualification of secondary education certificate”.

Mr. Temporary Speaker Sir, if you need people who are going to be role models to these children in these schools, and you are talking about a County Education Board whose functions include policy formulation, what kind of policy formulation can possibly come from a secondary school graduate? The qualification is not even given. It could be somebody with grade D-Minus or an E. If you are talking about the education sector, you must be able to create a professional board that can able to undertake the responsibilities that have been assigned to them. The minimum qualification should be at least a university degree and somebody who the children in primary and secondary school can look up to as their role model. Otherwise, having people who just graduated from Form Four and you are not even stating what kind of grade they achieved, that will be taking the qualifications too low.

The function and mandate given to this County Education Board is quite elaborate. I want to pick just a few. Clause 3(1) (g) says:-

“Vet nominees for the board of management members and managers for private institutions”

If you go to the functions assigned to the Sub County Education Board, it gives a function that appears to be a bit contradictory. It says:-

“To nominate board of management, members of private institutions”.

I do not think that that function of nominating should be given to a Sub-County Education Board because private schools are owned by individuals. We can only talk about vetting. The responsibility of vetting and regulating should be given to the County Education Board but the actual function of nominating can be left to the owners of those schools.

Mr. Temporary Speaker Sir, we also need to ensure that we do not over-legislate and push ourselves to dictating, especially to private institutions. The required minimum standards in terms of qualification for those managers and directors of private institutions should be left at that, and then the County Education Board can do the vetting.

The other issue is to ensure that if children are going to achieve meaningful, effective and proper education within primary and secondary schools, the schools must have the necessary facilities. If you look at one of the functions which I appreciate is very important, a function given to the Sub-County Education Board is to generate a priority list of the public schools with infrastructural challenges within the sub-county.

If you go to a number of our schools, you will find a school that has no library or laboratory but when given an opportunity, the school proceeds to buy a school bus. The priorities within our public schools, whether in primary or secondary are sometimes upside down. Why should you, as a Senator, find yourself being invited to a single stream school, started two or three years ago, with a population of 250 to 300 students, without a library, laboratory or the basic necessities to go and fundraise for the buying of a Kshs6 million bus? If you were to spend that amount to buy books, you would be able to change the lives of those students instantly.

Mr. Temporary Speaker Sir, I do not see how it is possible to convert the availability of a school bus into better grades in a school in the lifetime of that student. This is currently happening where a County Development Fund (CDF) receives a request to buy a school bus when the school has no equipment within the library, laboratory and books. This is something that needs to be addressed. I hope the Sub County Education Board can take this seriously so that schools are able to go for the necessary facilities in order of priority. This is, so that, if you have five schools in a zone and three of them have school buses, why do you need extra two buses? The schools whether public or private can have an arrangement of sharing some of these facilities so that they can invest their resources in better opportunities.

The Bill also speaks to the issue of ECD. The Constitution has devolved this function to counties. However, what is happening now is that if you go to each county, they have different standards. In fact, in my county, Early Childhood Development Education (ECDE) teachers are serving on contract basis while ECDE teachers from the neighbouring Uasin Gishu County serve on permanent and pensionable terms. These teachers are serving generally within the same region yet others earn Kshs15,000, others earn Kshs10,000 while others earn Kshs7,000. There is need for standardization.

If you look at the Constitution, the responsibility given to the national Government is to ensure that there are uniform standards with regard to the education sector. Therefore, whereas the ECDE function has been devolved, it is important to ensure that the constitutional function of the Teachers Service Commission (TSC) is

retained within that particular institution, so that you have standard and uniform norms in terms of employment of the ECDE teachers. There should be uniform qualification, terms of service, salaries and a mechanism for progression within the sector in terms of teachers or tutors within the ECDE sector.

Mr. Temporary Speaker, Sir, the other very important element of this Amendment Bill is with regard to school fees. Whereas it is important and this Bill speaks to it that children who are unable to pay school fees should be supported to complete their education, we need to ask ourselves why we find situations where students have a lot of fees balances. This is because some schools are charging too much school fees. You may find a school in Nairobi which does not have a school farm and therefore virtually buys everything from the supermarket from milk and maize and they charge Kshs112,000. When you go to a school in the village in the same category of national schools, you will find that they have a very big school farm. You may find that they source their maize locally from the school farm and have a dairy section and, therefore, get milk from the school farm. Virtually, all the foodstuffs are gotten from the school farm yet they charge the same school fees as the one being charged by a school in an urban area with no opportunities and support from the school farm.

Therefore, the CS in charge of education should enforce the regulations. Once you have the school fees guidelines, it should be made a criminal offence and headteachers must be held liable if they go beyond the provided guidelines in terms of school fees that they charge. Otherwise, schools will hike their school fees knowing that the Government will sort them out and before you realise, you will have a very huge bill to be paid by the national Government. Therefore, resources that should have gone to supporting schools in terms of infrastructure ends up being used to pay the school fees balances to support some of the students.

Mr. Temporary Speaker, Sir, I want to talk about the role of the sponsor in our schools. Many sponsors have helped in developing the infrastructural facilities within our schools. However, their role has been a little bit limited when it comes to curriculum development. Therefore, I support this Bill in so far as giving the mandate and the opportunity to sponsors to contribute towards the curriculum development. However, we need to ensure that these schools are not run by sponsors. The sponsors must be able to contribute but they should allow the professional management of schools to do their work because we have seen very many schools drop in terms of performance because of the wrangles caused by conflicting positions from sponsors. I think the sponsors' role should be limited to support in terms of infrastructure and curriculum development but then the responsibility of running and managing a school should be left to the professional team.

Mr. Temporary Speaker, Sir, I know that there will be several amendments that will need to be done on this particular Bill to ensure that a number of the concerns like the ones raised by Sen. Mutula Kilonzo Jnr. and others are incorporated in this Bill. Once this Bill is passed by this House and the "Lower House", it should streamline the running of our public and private schools within the basic education sector and ensure that the constitutional design and objective of ensuring that every child accesses basic education is realised.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, thank you for giving me the permission to speak to this Bill. The realisation of universal

education free of any impediments is guaranteed in the Constitution; same as social rights like the right to housing, the right to food, the right to good nutrition, the right to clean water, the right to a clean environment *et cetera*. It takes the will of the Government of the day to realise these rights. If we want these rights not just to be realised as a manifesto of the ruling clique or as a gift to the people, then we need very cogent and firm legislation so that it does not end where it starts.

Mr. Temporary Speaker, Sir, I do not know whether you have heard the opportunity and privilege to visit a country called Cuba. Cuba is a country that has been under siege from their powerful neighbour America from 1959. Thanks to President Obama who is attempting to relax the stranglehold on Cuba but very slowly. Because I have visited the country many times, Cuba is a country that I have greater admiration for. In fact, one of my sons is called Fidel, named after Fidel Castro. I always say that this is a country that has done so much with so little. In Cuba, education is free from pre-school to PhD. As long as you have the ability to learn, you go to nursery, primary, secondary--- As a doctor, I am sure you know the demographics of doctors. Cuba has the highest *per capita* doctor-patient ratio in the world.

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

[The Temporary Speaker (Sen. Sang) took the Chair]

Mr. Temporary Speaker, Sir, as we speak, I can tell you there are 28,000 Cuban doctors lend to Brazil with a trillion dollar economy. They have another 30,000 doctors serving in various countries in South America. They have 2,500 doctors in Congo, 5,000 doctors in Angola and we can count on and on. Cuba that does so much with so little gives Kenya a hundred scholarships a year because of proper planning, proper management of public affairs, zero tolerance to corruption and theft of public resources and, above all, a commitment to the rights of its people. This Bill attempts in a poor way to demonstrate the realization of universal and free education.

This is not how to do things. This is what I would call doing the right thing wrongly. We are creating amorphous boards without clear definition on what they will do.

Mr. Temporary Speaker, Sir, I agree with some of the comments that you have made when you were on the Floor a minute ago; that we should look for qualified people. Unless we do not know who is an educationist, someone with five years of experience cannot be an educationist. The dictionary defines an educationist as somebody with long experience; somebody who is tested, proven and trusted in matters education. It is somebody who has a history to talk about. A person with five years experience cannot be an educationist, unless we just want to create positions. Even for the Senate Majority Leader to become a professor, it did not come in five years; one has to walk through many values and hills of academia and public life to reach there. A priest is not ordained today and made a bishop tomorrow. It does not happen that way, unless it is in some of the churches that we see at bus stops; where today a man is a pastor, the next day an apostle, then a bishop and the following day a doctor. It goes on and on, but that is okay because we have freedom of worship.

Mr. Temporary Speaker, Sir, Clause 3 of the Bill sets out the county education board and lists things that are already being done. If we want devolution to work, it is

time we relooked at the structure of education within the context of devolution. There is absolutely no reason today primary schools in the country should not be in the hands of county governments, and leave the national Government with standards, setting national examinations and providing the necessary things that make the country develop at a level that is commensurate with where we want to go.

If we do not do this, we will continue to have the widening gap. There is no way a child born and brought up in Nairobi will sit the same examinations fairly with a child born in a village in Tharaka-Nithi, who will go through schools without text books. There are students who sit for Form Four exams – science practicals – and they have never seen a test tube or a bunsen burner, but they will compete with students in Precious Blood School and Lenana School. At the end, when the results come out, we say that a certain school is the best in the country. It is best based on what? How do you compare apples with oranges and say that oranges are the best?

The Bill states that one of the functions of the county education board shall be to facilitate the full realization of the rights of all children to access quality basic education. The facilitation for this is not the board, but resources and policy. If we have a good policy that says education is free and compulsory with penal sanctions to parents and guardians who do not send their children to school, we do not need a board to facilitate this. I am happy to hear that my distinguished learned friend, Sen. Mutula Kilonzo Jnr., said the same thing before I even came in. Great minds think alike.

(Laughter)

The other function of the County Education Board shall be to ensure that all children and youth of school-going age attend and complete basic education. This board is not a police force. How will it ensure that? The people who ensure that children go to school are parents and guardians and not a board. For example, if we have a board and Sen. (Prof.) Kindiki does not want his grandson to go to school, what will the board do, unless we have penal sanctions on those who are responsible for children? These provisions mean nothing and we do not need them in our law books.

The other function of the county education board shall be to ensure all institutions of basic education and training have a conducive learning environment and are provided with appropriate and adequate infrastructure. You may know that out there, we already have an education infrastructure with the former District Education Officers (DEOs) and former Provincial Education Officers (PEOs) who are now called regional directors, county directors, sub-county directors and ward directors. What will happen to those who are already there? What is a conducive learning environment? Is it good classrooms, schools away from highways or markets, so that they are not disturbed by noise? Today, if you go to River Road, you will find a school on top of a bar. This is also seen in many mushrooming towns. In one of the markets in my area, I saw a teachers training college on top of a bar. It is unlikely that those people will be taught anything meaningful when the bar is playing music 24 hours. These are conditions that are to be created by rules and law; to be enforced by the county governments or whichever collaboration we want between the national Government and the county governments.

When you read through this Bill, it is like we are creating a police force in education. They are unlikely to do these things. Clause 3(1) (d) states that:-

“Collaborate with the national Government and county governments, the Teachers Service Commission (TSC), parents, civil societies, international and local organisations in planning, promoting, development and coordination of innovations, research and the provisions of education infrastructure and instructional materials for basic education.” How can this board manage this? This Bill originates from the National Assembly. I listen to debates from that House and I am afraid to tell you that the quality is not quite impressive. The sheer numbers there make it difficult sometimes to give adequate attention. All these things that they have stated can be done by the county government if we devolve primary and secondary education. In fact, it is now time we need to audit the Constitution. I want to urge the Members in the Jubilee Coalition to stop being nervous about the mention of the words “auditing the Constitution.” My brother here is a professor of law and knows that world over, if you read comparative constitutional history, every new Constitution is subjected to a public audit within two or three years, to find out where it works and where it does not; where it works well and where it did not work well. This will ensure that the nuts and bolts are tightened; to have a real good Constitution. It has been done in India, United States of America (USA), where we keep quoting, and many other places.

The other function of the county education board shall be to oversee the establishment, operations, management of public and private youth polytechnics, homecraft centers, pre-primary, primary, secondary schools, any other institutions of basic education and training operating in the county and the implementation of projects and programs in collaboration with county governments and other stakeholders. Honestly, if this is what you want them to do, then, why do you want them to be appointed by a Cabinet Secretary sitting in Nairobi? Why can the governor not do it? If they will do localized work, there is no need for somebody sitting in Nairobi and imposing people on the counties.

Another function of the board shall be to establish and maintain a disaggregated databank on learners, teachers, all service providers, institution of basic education and training in the counties. This, again, is information that should be readily available in management of schools in TSC and Ministry representatives.

My distinguished colleague, the Senate Majority Leader, had asked me that he wants to dispose of another Bill, but I will exhaust my full hour on this Bill. Let us step down this Bill. Let him move what he wants to move, I will collaborate with him to see it through. When we come back to this Bill, then I will exhaust the remainder of my time and wait to continue on Tuesday, next week. I do not want to be constrained because this is a Bill which has consequences on some of the issues in the counties. I hope the copy of the HANSARD will be given to the Committee for them to look what we have said and see if it makes sense to them.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I thank my brother the Senate Minority Leader for that courtesy. I think the relationship between the two sides in this House cannot get any better, especially on issues that are not political. Education is an issue of policy. It is about the future of our country.

My point of order is to seek your direction in the context of what the Senate Majority Leader has said. I propose under Standing Order 39 where you can rearrange the

business of the Senate. I propose two things, one, we dispose of very small amendment Bills, but critical, by stepping down this temporarily. We can return to it.

On the other hand, looking at the time, we can extend the sitting until we finish the two orders so that the Senate Minority Leader can have all the time he needs because the time is far gone, we can extend our sitting until we finish the two Orders. That will be a better arrangement.

The Temporary Speaker (Sen. Sang): The Senate Majority Leader, your subsequent request on extending the sitting hour until we are done with this business is time bad. It is already past 6.00 p.m. and the Standing Order No. 30 says that the request has to be made within 30 minutes before the time appointed for adjournment. Therefore, that will not be appropriate for now unless we confirm the time when you made the request. On this other one of stepping down the current Bill, I think that is okay. Let us just confirm with the clerks what you need to do with that particular one.

(The Temporary Speaker (Sen. Sang) consulted the clerks-at-the table)

I am advised that you actually made that request one minute before 6.00 p.m. It is, therefore, still valid. However, next time, we have to do it early so that the Motion is dispensed with before 6.00 p.m. We will be extending that depending on the way you will word your Motion. If it is to dispense with the two Bills, that is fine. We can be able to do that.

Proceed to move your Motion.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move the following procedural Motion:-

THAT, this House resolves to extend its sitting today until the disposal of the Motion in Order Nos. 17 and 18.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

(Question put and agreed to)

(Resumption of debate on Bill)

The Temporary Speaker (Sen. Sang): Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, let me proceed. I was on Clause 3(g) on the vetting of nominees for board of management members and managers for private institutions. This is very dangerous because the national Government apart from posting teachers does very little for schools. The only thing that they are doing is posting teachers and sending some nominal sums of money for the universal primary education which is hardly much.

The history of schools in this country must be appreciated before we enact a law like this one. Schools are started by churches, parents, mosques and many other groups. Therefore, you cannot create a super board in the county to vet the nominees to sit on the boards of that school. What happens and must continue happening is to set the criteria on who qualifies to sit on a school board of management then the churches nominate their people, priests, lay preachers and other people. We cannot have a super board. For example, Riara School or Makini School, where my children went to school, is 100 per cent privately owned school. How then can you bring another amorphous body to vet the managers of those schools? Will they be vetting them on morals or academic standards and on what criteria? If I own a private school, I want results. I employ managers who will give me results. How can somebody else determine who will manage my school?

Mr. Temporary Speaker, Sir, for example, good schools like Lukenya, and Kianda or others, we cannot have some people appointed from Jogoo House to manage them. Most of those awards will be reward for political failures in many cases. Someone who vied for the position of a Member of the County Assembly (MCA) and failed and because he is “Jubilee *damu, anawekwa hapo*” or if he “CORD *damu, anawekwa hapo.*” That is what will happen. Such a person will be told to determine who will be the manager of Marel Academy, one of the schools in Bungoma that appears among the top five schools in the country in Kenya Certificate of Primary Education (KCPE). That cannot happen. We are micro managing private enterprises and schools in a manner that does not help.

Mr. Temporary Speaker, Sir, Clause (3)(h) talks about compiling the priority list of school infrastructure and development annually. Is it the intention of this law that the national Government will provide adequate infrastructure in every school? I know that it may be difficult to obligate the Government to give adequate infrastructure to all schools at once. However, it can be done progressively. Why would we have a body compiling a list of infrastructural development annually?

In a county with 600 schools, the whole year these fellows will just be compiling infrastructure reports and earning allowances every single day. If you have 600 schools – I know there are some counties with 1000 schools. In my county, we have more than 1,000 primary schools. If a year has 365 days and these guys are compiling infrastructure reports one school a day, it means by the end of the year, they have not even done one third of the schools. I do not think this is what we want. In any case, if you want to know the infrastructure development in any school, all you need is to mail a questionnaire to the head teacher. How many toilets do you have? Are they flush toilets or pit latrines? How many classrooms do you have? How many boardrooms do you have? How many kitchens for teachers do you have? You do not need anybody to go round compiling lists. This law is not helpful.

Another issue is transfer and discipline for learners and non-teaching staff employed by the board of management. This is very strange. If a learner, for example, in Nairobi School is indisciplined, where do you transfer that learner to? These children who burn dormitories – for once I agree with my friend, Dr. Fred Matiang’i – those children should not just seek to be relocated to other schools to burn other dormitories. There must be some measures of discipline. How can you pass a law and say that when the headmaster has a troublesome student, they transfer him or her to another school. This is not right.

In addition, there is the question of transferring non-teaching staff employed by the Board of Management. Non-teaching staff include watchmen, grass cutters and cooks. How do you start transferring a cook from Kapsabet High School to Chepterit, for example, or Kapsabet High School to Nandi Hills? Each school employs their cooks, manage and sack them if they do not work. In fact, in some schools, I have seen this and encourage it – you find a school has employed a watchman who sacrifices his salary to sleep at the gate day and night for his child to go through that school and get education. If you transfer him to another school, will he move with this child to that school to get the same facility? So are the cooks, grass cutters and lab assistants. In any case, the schools that do not have adequate teachers employ unemployed graduates and high school leavers. How do you now have this amorphous board transferring them from one school to another when their terms are negotiated personal to the person and the school that is employing them?

Mr. Temporary Speaker, Sir, I am sure my colleague across the Floor; the Senate Majority Leader being a former university don sees this point. These things are not workable. We should not even imagine them and put them in the law. I do not know this law.

There is also general performance of institutions of basic education and training; to monitor and evaluate general performance of institutions on basic education and training ongoing programmes and projects in public institutions and achievement of learners. The Government has an arm called Quality Assurance and Standards. What is that arm going to do? I will now go to the composition of the Board and you will see how they are ill-prepared to do what we are asking them to do:-

(j) To monitor and evaluate –

(1) the conduct of national examinations, and institutional based assessments.

How can this board monitor and evaluate the conduct of national examinations when we have the Kenya National Examinations Council (KNEC), Teachers Service Commission (TSC) and teachers unions? I honestly do not understand the philosophy behind this law. I hope our Committee on Education headed by Sen. Karaba will be able to look at this.

Mr. Temporary speaker, Sir, the other function is:-

(k) To coordinate adult and continuing education programmes in the county.

Again, we have officers employed by the national Government who can do this.

(l) Maintain a databank of all students who are ranked in the first quarter in the constituency in the national examinations at the primary level, and who due to inability to pay school fees, fail to get entry into or complete education in a public secondary school.

After compiling this list, what next? A law should not be having no foundation and no end. What is the mischief we are trying to cure? You maintain a databank of students who are ranked good and who cannot go to schools because they have no fees. What do you intend to do with that?

If we want to give universal education, which is what they do in other countries, we should, for example, declare like in our manifesto as Coalition for Reforms and Democracy (CORD), that universal primary education means that every child going to

public school will have free education, free of any payment. They will be provided with uniforms, books and every learning material from nursery to Form Four.

Any parent who feels that they can do better with their children, can take them to paid private schools. However, in all public schools, whether you are a son of a professor, wood-cutter, stone-cutter or a Cabinet Secretary (CS), when you go to a public school, you are entitled to all learning materials; education free of any payment with uniforms provided.

When I went to school, before any one of you, there was a class monitor between Standard One and Four, who every morning put ink in your ink pot, provided you with an ink pen, pencil, sharpener, slate and a slate pen free. When you lost it, you would be punished and given a replacement. That is what free education means.

Mr. Temporary Speaker Sir, today, we send about Kshs2,900 per child to a primary school, while a teacher sits there and asks parents to pay money for teachers' lunch, tree planting, which they never do and replacing books even when there were no books. When you calculate, you will find that parents in primary schools are paying three times more than what the Government is sending for free education, not to mention that they have to buy uniforms, transport their children to school and do all manner of things.

This databank means nothing if the intention is not to provide--- I want a provision that every child in public school in this country will be entitled to education free of any payment either for learning material or school fees. Then we know that we will be able to provide everything for the children. In areas that have got serious climate challenges like Turkana, Marsabit, Mandera and Tana River, we need a provision that the children who go to school in Moyale are entitled to a quarter or half a litre of water a day because of the weather ravages. This should form part of the learning materials in school because the levels of dehydration there are not the same as in Meru, Bungoma or Kakamega. They are told to perform other functions as it may be necessary and that is where the abuse comes. They will just sit and ask what their any other functions are. We must ensure that there is a paved road to school. We must ensure the teachers are doing this and this will not work. We are actually trying to destroy education.

Mr. Temporary Speaker, Sir, regarding the composition of the board, I agree with you that the numbers in this board is too large. They have stated here that every county education board shall consist of a chairperson and seventeen other persons. First, the number is bloated. If they are going to do the things that are enumerated here, the board will be extremely costly doing things that others can do and are doing. That money can improve infrastructure in schools. The composition also requires an educationist of five years standing. There is no educationist of five years standing. If you want to look for an educationist, people who qualified to be called so have served more than 10 years. There is also maturity and settlement in career and so on. In fact, we have a lot of distinguished people in the villages who have served as education officers retiring at 55 years and they are still very strong. We also have people who have retired as headteachers at 55 years and they are still very strong and valuable in their contribution to the society. Those are the kind of people we could be looking for. This kind of thing is not good. Other members of the board are the county director of education who shall be secretary to the board, the county executive committee member in charge of education, the county commissioner and a representative of the TSC and where applicable, one person each representing the following---

Mr. Temporary Speaker, Sir, they are saying where applicable. When this law is passed, it will be like mandatory. They will make sure that they fill every slot representing jointly the National Council of Churches of Kenya (NCCCK) and the Evangelical Fellowship of Kenya (EFK). These churches have an umbrella. Like I see even in my county, the Catholics, the Anglicans, the Salvation Armies and the Quakers have a congregation where they come together to pursue joint interests. They can decide that if one church produces a representative, another church should replace that person when they retire. We will have representatives from the NCCCK, the EFK, the Kenya Episcopal Conference of Catholic Bishops which is exclusively my church and the Muslim Education Council. All these can be comprised into one person representing religious grouping and it will console them because they have an umbrella organisation.

Mr. Temporary Speaker, Sir, when we were agitating for sending home the IEBC commissioners, they turned up to help us talk to the intransigent Jubilee Regime. I noticed that they have a very cohesive organisation where they come together. They have one spokesman. Like in our case, it was Bishop Korir of Eldoret Diocese and Bishop Rotich as their spokesmen. When they finished talking, the Muslims, the Evangelists and others were saying; "As our leader said". So, we do not need to have four representatives. The more people you have in any body the more difficult it is to make a decision because people will always want to consult at every level.

Clause 4(1) states that:-

“(g) a representative of the association of private schools;

(h) two representatives of trade unions representing the interest of teachers;

(i) two representatives of parents and teachers association;

(j) a representative of persons with disabilities;

(k) two members nominated by the following bodies-

(i) primary schools head teachers' association.

(ii) secondary schools principals association.

(l) a representative of a child rights organisation.”

We are stretching things too far. A person can have a disability and still represent all these interests, provided we define exactly what we want to achieve. What is important is not who sits at the table but what comes out of that table. If the intention is to take care of children with physical challenges--- I salute my father who is now 87 years old. He started a school in Bungoma called Nalondo CBM School for Disabled Children. It has now been taken up as a national school. That school produces brilliant disabled children. My father is not physically challenged, but he has brought this school from nowhere and now a primary and secondary. It is one of the tops schools in the country.

I am sure that my distinguished colleague, the Senate Majority Leader, represents people in Tharaka-Nithi regardless of their status; whether they are disabled or mentally challenged. That is why we, the lawyers - I am happy that the only Members left in the House are lawyers - say that we do not design bridges. But when engineers design faulty bridges, they run to us to defend them. We do not go to the moon, but when astronauts go to the moon and quarrel there, they come back on earth to look for us to defend them. We do not know how to operate a dead body, but when a doctor carries out a faulty autopsy on a body and is challenged, he runs to us. When a doctor prescribes some wrong medicine that makes somebody bonkers, he comes to us for defense. You do not have to

be a doctor to defend a doctor. All you need to do is have the capacity, ability and the know-how skills to defend a position.

Mr. Temporary Speaker, Sir, I hope that my distinguished colleague will refine this law to show the difference between this House and the House where it came from.

Clause 4(3) states:-

“All members of the county education board shall have a minimum qualification of secondary education certificate.”

This, again, is not right. We see advertisements indicating that everybody who wants to qualify for public appointment must have a post-secondary education qualification. Now we are reducing it to a minimum qualification of secondary education. We are not even saying that one must have attained some level of qualification at secondary school. I have a friend in the National Assembly, the Member for Likoni, Hon. Masud Mwahima. He sat for examinations and failed every single subject that he attempted. Do you now say that he has secondary education? You must define the qualifications. Somebody who goes to school, plays football and fails the Form Four exams completely---

The Temporary Speaker (Sen. Sang): Senate Minority Leader, you have just made serious allegations against a Member of the ‘Lower’ House.

The Senate Minority Leader (Sen. Wetangula): It is a fact. In fact, I started by saying that he is my friend. I know what he did because he is my friend. It was even in the media, that he sat for examinations and failed in every subject. I am not imputing any improper motives, but stating a fact about him. I am not even saying that he is masquerading; he knows that he did not pass.

What do we mean when we say “shall have a minimum qualification of a secondary education?” If we are creating a board that will look at the qualitative nature of our education, we cannot just have anybody who has a secondary education. Human nature is basically evil and wicked. It is the law that we make that shapes people into good behaviour.

One of my heroes in life, Fidel Castro, when he became the President he made his brother the Deputy President against all odds. When President JF Kennedy became President, he made his brother the Attorney-General. If you look at President Uhuru Kenyatta, his sister is our Ambassador in Ethiopia and his other sister is nominated to this House. This is human nature. There are very few of us who would say: “I represent my family, let somebody else do it.”

We, therefore, need laws to restrain these excesses in human infallibility which we all know. I hope my distinguished colleague, the mover of the Bill, will look at this. A Member of Parliament from the respective county may attend the meetings of the County Education Board but shall have no right to vote. I want to ask the Senate Majority Leader to recast this to say:-

“In any county, Members of Parliament sit and nominate one of them to represent them on the board”.

If the Constituencies Development Fund (CDF) will be there, it will be a major factor. In fact, CDF is used largely for education purposes because many other things have been devolved and are being handled differently. We, therefore, need to have a representative of the County Assemblies and a representative of the Members of Parliament. We cannot load all of them. A county like mine that has nine Members of

Parliament can sit and nominate one of them or better still, they can even rotate and have one of them sitting in this Committee every year. The MCAs can also do that, so that they are able to monitor the interests, if this board is necessary.

When you go to Section 25A; the creation of Sub-County Education Board, my thinking is that this is totally unnecessary because if you have a board in the county, you cannot have another board in every constituency. In a county like Nairobi, with seventeen constituencies, you will have 17 other boards sitting with 12 people and the chairman of the board making it 13 multiplied by 17. All those boards will be money guzzlers. I am sure we can use our money differently. There are many schools which do not have, as you said, libraries, books and basics for learning. I want to urge that the Committee on Education of this House look at this differently. If we find the big counties like Bungoma, Kiambu, Kakamega, Machakos, Meru and Nakuru, we can then design a way of having them have three sub-county boards then cluster the constituencies, so that we do not have too many boards doing the same things for to do this is wasteful both in terms of money and so on.

The people who will sit in the Sub-County Education Board include the Sub-County Education Officer, Representative of the County, Executive Member in charge of Education who will sit in both boards – again this does not make much sense. There is also a representative of the Teachers Service Commission (TSC) sitting on both boards; a representative of the Association of Private Schools, the churches nominating conferences of bishops, Muslims, one representative of persons with disability and so on. We will have two people nominated by the primary and secondary schools heads and the Deputy County Commissioner (DCC).

Mr. Temporary Speaker, Sir, how many deputy commissioners are there in each county? Only one! The others are called sub-county commissioners, those who now hold the positions that used to be held by the District Commissioners (DCs). President Kibaki at one point gave out so many districts. He decided that every constituency should be a district. Therefore, the position of the DC was renamed to Sub-County Commissioner. Therefore, who is the DCC in the case of Nairobi County who will sit in 17 boards? That means that he or she will do nothing else. In Bungoma County, for example, he will sit in nine sub-county boards because each county has only one DCC. This is not properly thought out. I would like the Senate Majority Leader to relook into it.

The Bill further states that:-

“In appointing persons to be chairpersons and members of the sub-county education boards, the Cabinet Secretary shall observe the principle of gender equity, regional, ethnic and religious balance as well as transparency and openness.”

However, what will happen to counties that have only one ethnic group. How will these principles be applied? These are things that are already in the Constitution. Therefore, he should say that constitutional provisions must be observed where necessary. There are some busy bodies like Mr. Okiya Omutata who will just go to court to challenge things that do not make sense sometimes. However, the courts are there to hear them. When one is a judge and a litigant comes before the court, you must hear him or her however hopeless. Every dog is entitled to its day in court as the saying goes.

Mr. Temporary Speaker, Sir, further the Bill provides that all the members of the Sub-County Education Board shall have a minimum qualification of secondary education. That is the same to what I said earlier. I do not need to belabor. The Senate

Majority Leader must define what secondary education certificate is. If one has a certificate like my friend Mwahima, does one qualify? I know that he is not the only one, there are many others. These days, when one wants a certificate, they go to River Road where one can get a degree from Australia and New York as well as title deeds for non-existent property.

The Bill proposes that a Member of Parliament from the respective sub-county may attend the meetings of the Sub-County Education Board but shall have no voting right. The Members of Parliament and MCAs are representatives of the people. Therefore, when you create something that touches the lives of people, do not give them the option of they may attend. Obligate them to attend but define who seats there to attend. The moment you say that they may attend, they just leave it. Some of us will remember that there was a man called hon. Kioko from Changamwe. He was a Member of Parliament for 10 years then he was voted out and lost all the subsequent elections for about five times. However, when the people made the mistake of electing him again, he went back and told them: "Thank you for giving me my last chance to get my pension. Let me not see anybody at my door." For five years, he worked that way. After those five years, he had the audacity to go and seek re-election. He was of course summarily shown the door. Therefore, we must obligate leaders to go and attend those meetings.

Mr. Temporary Speaker, Sir, I do not want to belabor the point on Clause 25(C). The same fear that I have on county boards are replicated on sub-county boards. They have been obligated to ensure that all institutions of basic education and training have a conducive learning environment. If the County Education Board is doing the same thing, why do we want the sub-county board to replicate the same function? If a board sitting in Kapsabet is looking at the whole of Nandi County, how then can we say that another board sitting in Emgwen can do the same function as the board sitting in Kapsabet? We are repeating what happened during the reign of President Kamuzu Banda when he terrorized Malawians. He would send a delegation to Nairobi for a meeting then send somebody to watch out how that delegation is going to behave then send another person to watch the person watching the delegation. Each one of them was a spy. If a bad report was issued on you back at home, you ended up as food for the crocodiles in River Zambezi. That happened to many people.

It will also establish and maintain a register for all public and private youth polytechnics, home craft centres and so on. In addition, it will generate and maintain statistics in all education matters. All these are the things that the main board is supposed to be doing. The other one is to generate a priority of lists of public schools with infrastructure challenges and nominate board of management members and managers of private institutions. How can a board nominate board members for a private school? In fact, the private school in most cases is managed by the owner of the school. So, how do you bring somebody and lord onto that institution. We have private Teachers Training Colleges (TTCs) managed by individuals.

Another function is to coordinate adult, continuing education programmes and so on. I can see the light. Does it mean I have five or ten minutes? Fine, I have five minutes. I will quickly go to Clause 25(d): The members of the sub county education board shall be paid such allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission

(SRC). As you can see, we are creating eating chiefs. This money can do something better.

Clause 6 states that pursuant to Article 235 and 237 of the Constitution, the Teachers Service Commission (TSC) shall assign teachers to the public institutions of basic education and training used for conducting pre-primary education, child care facilities, home craft centres and village polytechnics. This is restating the Constitution. What happens if they do not? When you create an obligation, you also create sanctions if that obligation is not met.

Mr. Temporary Speaker, Sir, I do not know where you come from, but being from Jubilee areas, I am sure you are favoured than us. I have schools in my county with 1,000 children - considering the level of procreation among the Luhya Nation – it has two TSC teachers. So, to say that the TSC will provide teachers without a sanction if they do not supply is rhetorical. We must have an obligation that TSC will make sure that each school has teachers commensurate with its establishment so that children can enjoy. There is no point saying that we have universal education if we have not teachers.

Then we have Clause 27: To participate and offer proposal matters regarding syllabus, text books, digital content and other institutional materials and teaching aids. There is a full department at the Kenya Institute of Curriculum Development (KICD). If these boards will do this, what will the KICD do? It has done a very good job. The only thing I have never agreed with although I live with it, is when they veered off to create 8-4-4, then when Kenyans got used to it and said it is working - my children and many others have gone through it and have come out very well - then the new Cabinet Secretary comes and just to appear to be a reformist, regardless of what he is doing, he says that he is abolishing 8-4-4.

Mr. Temporary Speaker, Sir, I even talked to him. As a professor, I would like you to talk to him. If we really want to change our education system, then let us align our education system with East African Region where we belong. Uganda, Tanzania, Rwanda and Burundi have education up to Form Four, Form Five and Form Six then university. This is so because our job market is primarily in this region. Why do we want to create a mongrel that Dr. Matiang'i is trying to create? I do not hear anybody speaking against this yet we have very clever people with critical minds in Jubilee like the Senate Majority Leader here. Sen. Karaba, the Chairperson of the Committee on Education is just happy answering questions here whose answers are drafted elsewhere. They are not thinking outside the box. Nobody has put Dr. Matiang'i to task. At least, I salute the National Assembly. I have heard them speak. In fact, when he said there would be no ranking of schools, my party, FORD Kenya through hon. Chris Wamalwa took a Motion to the House. It was passed and Dr. Matiang'i has now been made to appreciate that ranking of schools is not harmful. We must reward excellence.

When we rank schools, we must also say the conditions under which they operate. This is because when you rank Alliance Boys High School, Mang'u High School and Friends School Kamusinga, then we should look at other schools at different levels because you cannot say that Alliance Boys High School is the best school in Kenya. How do you compare it with a school down the hill as you go towards Kaimosi? How do you compare Kingwayo Primary School with Makini School and then say that Makini School is the best? Kingwayo Primary School does not even have a classroom; children sit on stones.

I went to some area called Maikona in Marsabit where you go to a school and you wonder whether it is a school and whether that is Kenya. That child there is going to be ranked with a child in a school in Nairobi. It is not fair. We must compare the like with the like. I want to encourage the Senate Majority Leader that the Senate is saying that these boards are going to do what the Kenya Institute of Curriculum Development (KICD), well funded and established with a good reputation is doing. It is not necessary.

If you look at the quality of people who are going to be put on those boards, they are unlikely to meet this challenge. The Muslims will send an Imam on the basis of his loyalty to his mosque while Catholics will send a priest on the basis of his loyalty to his bishop.

The Temporary Speaker (Sen. Sang): Conclude, Senator.

The Senate Minority Leader (Sen. Wetangula): Okay, Mr. Temporary Speaker, Sir. These things happen and will continue happening. I have several other points, but I will make notes and pass on to my colleague.

Lastly, I want to emphasize the point you made. Today, you go to the countryside, the school has no laboratory and library but it has a Kshs6 million bus, a bus shed, a driver who drives it at least once a week, an insurance cover and everything. This is a mania of buses.

When I was a Member of Parliament for a constituency, I made it very clear that if you wanted a bus, you go and combine four schools and I help you get a bus that will be available for use to those four schools. What is happening is that those buses are business for our brothers and sisters; the headteachers. They lease them out for funerals and other things. This is where we are failing. Basic education means and excludes buses. I have even seen the school that burnt dormitories because the students were not allowed to watch football. Watching football is not a core function of the school. Let me end here so that we can go to the next business. I wish I had more time.

The Temporary Speaker (Sen. Sang): Senate Minority Leader, you might want to note that every other time a school buys or acquires a new school bus, the Principal happens to buy a new small car. You cannot understand whether it is a package. I think Sen. Karaba needs to investigate the relationship between the two; the small vehicle and a school bus.

There being no other interest to contribute on this matter, I call on the mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, allow me to thank the Senate Minority Leader. It is always a joy to listen to my brother Sen. Wetangula. He is a great debater and somebody with a very rich mind, except in a few instances when he is tempted to veer off from the strictures of the very high office which he holds as the opposition leader. I understand him because every time he has an opportunity he has to try and market to the country what he would provide when and if he becomes President in the year 2095.

Mr. Temporary Speaker, Sir, I will address myself to five things: One, the Senate Minority Leader has reminded me of the Kenya School Equipment Scheme (KSES). I want to be on record that I also benefited from the KSES where when you reported to Standard One, you were automatically given certain basic kit for learning. Those were good days because all children were equal. Text books and pencils were distributed to all children in the public primary schools. I hope that is where we should go back to. I also

want to join him in condemning this craze for fancy and useless things in our schools, especially the buses. There is a lot of pressure on our schools to buy buses. I thought I was the only one affected by that craze, but I am shocked it is happening everywhere.

Mr. Temporary Speaker, Sir, secondly, I am in full support of what the Senate Minority Leader has said about decoding the free basic education. Time has come for us to set up a criteria. Although I know he was trying to use the Floor of the House to think through what he would recommend as the manifesto of his party, I still think it is a good idea. We need to develop a basis definition of what free primary education means. We are already ahead of the time. However, that notwithstanding, it helps if all of us, both in Government and the Opposition, think of moving this debate further and creating the elements of free primary education.

Thirdly, when Sen. (Dr.) Khalwale contributed earlier and I think the Senate Minority Leader also alluded to it, is the issue of education qualifications for members of the county education board and the sub-county education board. This is critical. If you want to promote education and inspire learners, you must bring the best brains into the administration and management of education. There is no part of this country that does not have learned people. Therefore, if you require people who have secondary education to serve in the sub-county education board, you are likely to get retired teachers, retired agricultural extension officers and retired clinical officers to serve in those boards and that would inspire students at least to achieve some basic qualifications.

Finally, it is an issue that was raised by Sen. (Dr.) Machage on whether or not the issue of requiring the TSC to assign teachers may not interfere with devolution of early childhood education and village polytechnics, but it does not. In fact, if you look at the provisions of the Constitution, Article 237 of the role of the TSC includes assigning teachers. However, if you look at the amendment Bill, it says that the TSC will assign teachers, but the county governments will maintain the disciplinary and supervisory functions on those teachers in accordance with Article 235 of the Constitution. So, that aspect has been taken care of. In any case, when this Bill goes to the Committee, I am sure if there are any issues when they will be doing public participation, the Council of Governors (CoG) and other stakeholders will help us refine the Bill later.

This Bill is open for improvement. I welcome all the comments that have been made in its support and we will try and improve it. I thank every Senator who has supported this Bill.

Mr. Temporary Speaker, Sir, I beg to move. If you allow me, pursuant to Standing Order No.54(3), I request that the putting of the question be deferred to the next sitting day.

The Temporary Speaker (Sen. Sang): I so direct that the putting of the question be deferred to tomorrow.

(Putting of the question on the Bill deferred)

Next Order.

*Second Reading*THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.17 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir. I beg to move that the Agriculture, Fisheries and Food Authority (Amendment) Bill (National Assembly Bill No.17 of 2015) be now read a Second Time.

This is a small amendment Bill. It amends the law that we passed recently - the Agriculture, Fisheries and Food Authority Act - to protect workers in the agricultural sector. I want to thank the Senate Minority Leader for agreeing that we extend the sitting time so that we dispose of this business. We are doing this because of the pressure that is on us, as a House, to do more in terms of disposing Bills. I am so grateful because the leadership that my brother has shown, especially today, is commendable. It is also notable that it is the two leaders who are still in the House. This is something that should be lauded.

Mr. Temporary Speaker, Sir, the amendment Bill has been brought due to pressure from the trade unions. I know that my brother, the Secretary General of the Central Organisation of Trade Unions (COTU) and former Secretary General of the Agricultural Workers Union, *Mzee* Francis Atwoli, must be a happy person. This Bill states that if there is manual transportation of agricultural load, any person who assigns another person to manually transport agricultural load must ensure that the person who is carrying out that transportation is adequately trained or otherwise instructed by a qualified person on the manner in which that transportation has to be done.

Before I proceed, allow me to explain why we need this amendment. There have been many accidents involving workmen in the agricultural sector, when they are carrying or transporting agricultural products. We have seen pictures on the television of men bending to carry heavy loads of agricultural produce. Therefore, this Bill tries to limit accidents for purposes of educational, health and safety, so that a young man is not subjected to carrying a 100 kilogram bag from one place to another. Whether or not they can do it, it may not be healthy to do so. Other than the issue of injuries at the work place, this Bill is here because of misuse of, especially female workers. We have cases in the Economic Processing Zones (EPZs) where even pregnant women have been forced to carry agricultural loads. They are denied maternity leave and forced to carry on with agricultural manual work when expectant. We have also had cases of child labour. This Bill addresses the issue of minimizing overworking or overloading agricultural workers, reducing or prohibiting the use of pregnant women in carrying agricultural loads and use of children in transportation of agricultural loads.

The Bill provides that any person who is supposed to carry agricultural load must be trained and properly instructed to do so for safety and health reasons.

Secondly such person must undergo regular medical examination to determine fitness for the assignment so that again they do not fall sick. Those who transport agricultural loads shall be given instructions on how to do that transportation. To facilitate manual transport of agricultural loads, appropriate technical and packaging equipment should be provided by the employer.

Finally, I want to highlight Clause 40(c)(1), which says that the maximum permissible agricultural weight to be transported by an adult shall not exceed 50 kilogrammes. This is important because we have had workmen compensation issues due to serious injuries because of overloading workers in the agricultural and other sectors. So no person shall be permitted or compelled to carry a load of more than 50 kilogrammes. That must be an adult person. Any employer who contravenes this law is subject to a fine of Kshs100,000 or a jail term of not more than six months or both.

A second thing with regard to female workers, the manual transport of agricultural loads shall not be assigned to a woman during pregnancy or during the maternity period. This is notorious in the Export Processing Zone (EPZ). There are special advantages that the EPZ industries and establishments enjoy. One of them is very little scrutiny of labour standards. What has happened in the context is that pregnant woman or women going through the maternity period have been forced to carry a heavy load which has affected their health. Any person who uses women in this context is liable to a penalty of Kshs100,000 or a jail term of not more than six months imprisonment or both.

An employer shall not assign to any child the manual transport of agricultural product loads. Strictly, children should not be involved. Again, anybody who contravenes this is liable to a fine of not exceeding Kshs200,000. You can see that the penalty when it comes to children is even higher than the one for women and adult men.

This is a straight forward matter to protect our workers. It is in accordance with the International Labour Organisation (ILO) Convention No.185 which prohibits the use of children and pregnant women in manual labour. I think that Convention which Kenya has signed is part of the law of Kenya under Article 25 of the Constitution. It is a treaty that Kenya has already ratified.

With those few remarks, I beg to move. I request the Senate Majority Leader to second this Motion.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity and my colleague for moving this Bill whose content and the philosophy is consistent with International Labour Organisation (ILO) standards. As I second this Bill, I will just point out a few things because we are running late and we need to do other things.

Mr. Temporary Speaker, Sir, Clause 40 (a) of the Bill provides that an employer who assigns to any person manual transport of agricultural goods shall ensure that such a person has the following requirements; adequate training or instructions by a qualified person and a regular medical examination to determine fitness. I do not know whether there will be some regulations to this. If there will be no regulations, then we need to add a clause that there should be a certificate to this effect because if we just say that there should be adequate training or instructions, how will we prove that there has been training if there is no occupational certificate or whatever we may chose to call it?

A regular medical examination also requires that a certificate be in possession of the employer and employee. The Bill further requires that an employer who occasionally assigns manual transport to any person shall ensure that the person is given appropriate instruction in the manner in which such operations shall be carried out. I believe that under the Tripartite Pact, they should develop some manuals to guide because if left like this, there are some very rogue labour officers out there who will turn these vague laws

into toll stations. They terrorize people to collect money. This country needs salvation. I was watching the television about six months ago and children of a primary school were being asked what they would like to be when they grow up. One of the children replied that when he grows up, he would like to be like Mr. Kamlesh Pattni.

Mr. Temporary Speaker, Sir, you are lucky you are a young Senator. I am sure that your colleagues out there do not talk about earning money. They talk about making money. The philosophy of earning money in this country is completely dead. People only talk about making money and cutting deals.

On Clause 4(c), I do not know how many of us have visited Australia. When you land at the airport and you are carrying a bag of more than 30 kilogrammes, you carry it yourself. The employees of the airline and the airport are obligated by the law not to carry a load heavier than 30 kilogrammes. They are told that if they do, and their back snaps or they suffer an injury, there is no insurance cover because that is *volenti*. What we call *volenti non fit injuria*, voluntary assumption of risk by a victim and it has no recourse to the law. If you stand in the way of the lion and it mauls you, you cannot then run and say that the owner of the lion was careless. It is good that we have stated 50 kilogrammes but in Australia, it is 30 kilogrammes. However, I believe that this is drawn from international standards.

Mr. Temporary Speaker, Sir, Clause 40(d) on the manual transportation of agricultural loads by women during pregnancy and maternity is a sword that cuts going and coming. We have to put in place very stringent protection rules for women. What these fellows especially those at the Export and Processing Zone (EPZ) and flower farms that run almost like slave camps will do, is sack the pregnant women and those that have just had children because they cannot carry heavy loads instead of protecting them. This is because they have a queue of people waiting to work. We need a protection regulation. I know that the trade unions protect the workers. However, I have practiced trade union law in this country for a long time and I know that some of those trade unions are merchants themselves. They literally live on the plight of the workers they are supposed to represent. In fact, many of them are on the payroll of employers. So, they go there and a worker has been injured and dismissed, the employer pays them and they call the worker and you are on your own and so on. So, we need some regulation to this so that we can guide it. I encourage my brother that at the Committee Stage, we have a Clause saying there will be regulations borne out of the tripartite arrangement of the trade union, the employer and employee so that they can address this.

Mr. Temporary Speaker, Sir, we have Clause 4(e) which states that an employer shall not assign to any child the manual transport of agriculture. This vague structure of the law seems to indicate that child labour is condoned. A child has no business being in any employment and, therefore, cannot be assigned anything. So, when you say that an employer shall not assign to any child, it means that there is legitimacy in having children but you cannot assign them. The international law states that you cannot employ children. It is outlawed even in our Constitution. The penalty is superfluous because a person who employs a child commits a criminal offence that must be punished. You cannot say that you assigned a child to carry a load. There is no situation where a child should be in employment especially of this nature. There is retribution against Turkey, India and Pakistan for employing children to weave those beautiful carpets, wall mats and so on. Child labour is outlawed. Period! So, you may wish to recast this or just say, child labour

is unlawful and anybody who is found employing children is punished. You can pick from the laws about child labour that exist already so that somebody cannot say, you are only complaining about carrying loads but you are not complaining about employment.

Mr. Temporary Speaker, Sir, there is the issue of punishment. The first instance of punishment of Kshs100,000 and six months is okay. However, if it is a persistent offender, then we need to qualify that a person who is persistent and consistently flouts this law then gets a heavier punishment because all they will do is; for somebody running an industry of a couple of billions, Kshs100,000 is nothing. When they are repeatedly found transgressing then the law should be a little harsher than we are proposing.

Otherwise, this is a straightforward Bill. I thank my colleague for creating extra time so that we can dispose of some of these Bills that on the face of it look very small but are very critical for the good order within our labour structures in the country.

Mr. Temporary Speaker, Sir, with those remarks, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Sang): There being no interest to contribute on this matter, Sen. (Prof.) Kindiki you will have the rare opportunity to respond to the Senate Minority Leader who seconded your Bill.

Proceed.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, I thank the Senate Minority Leader for his patience and useful contributions. He has made three points which I agree with.

The first one is that we should have regulations between employers, employees and the trade union movement to ensure that these amendments are given more effect. I like the idea of the certificate. How do you know somebody is qualified to carry loads unless there is some authenticity that this was the training, where, when and how long it took. You need some kind of certification.

The second point he has made which I also agree with is on the issue of child labour. I agree fully that child labour is prohibited. It is even illegal under the Employment Act. Perhaps, we will discuss it at the Committee Stage. I welcome an amendment even for the removal of this section which is superfluous in the first place.

Finally, Mr. Temporary Speaker Sir, he has talked about the need to protect women who are hereby protected from carrying agricultural loads but their jobs should be secured in one way or the other so that they are not victimized for getting pregnant or for giving birth. None of them should be a basis of punishing our mothers, wives and daughters.

I beg to move, that under Standing Order No. 54(3), given that we do not have numbers to vote, I request that you direct that the putting of the question be deferred.

The Temporary Speaker (Sen. Sang): Very well, I so, direct.

(Putting of the Question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until Tuesday, 12th July, 2016 at 2:30 p.m.

The Senate rose at 7.20 p.m.